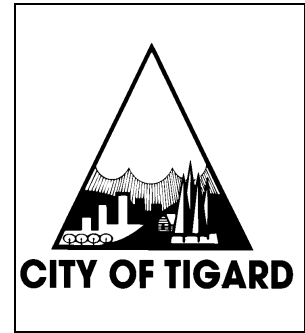

TIGARD CITY COUNCIL
MEETING

November 13, 2001 6:30 p.m.

TIGARD CITY HALL
13125 SW HALL BLVD
TIGARD, OR 97223



PUBLIC NOTICE:

Anyone wishing to speak on an agenda item should sign on the appropriate sign-up sheet(s). If no sheet is available, ask to be recognized by the Mayor at the beginning of that agenda item. Visitor's Agenda items are asked to be two minutes or less. Longer matters can be set for a future Agenda by contacting either the Mayor or the City Manager.

Times noted are estimated; it is recommended that persons interested in testifying be present by 7:15 p.m. to sign in on the testimony sign-in sheet. Business agenda items can be heard in any order after 7:30 p.m.

Assistive Listening Devices are available for persons with impaired hearing and should be scheduled for Council meetings by noon on the Monday prior to the Council meeting. Please call 503-639-4171, Ext. 309 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

Upon request, the City will also endeavor to arrange for the following services:

- Qualified sign language interpreters for persons with speech or hearing impairments; and
- Qualified bilingual interpreters.

Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. Please notify the City of your need by 5:00 p.m. on the Thursday preceding the meeting by calling: 503-639-4171, x309 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

SEE ATTACHED AGENDA

A G E N D A
TIGARD CITY COUNCIL MEETING
NOVEMBER 13, 2001

6:30 PM

- EXECUTIVE SESSION: The Tigard City Council will go into Executive Session to discuss real property transactions under ORS 192.660(1) (e). All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(3), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
- STUDY SESSION
 - > POLICE CONSOLIDATION SURVEY RESULTS UPDATE
 - Staff Report: Police Department
 - > BULL MOUNTAIN DRAFT STUDY COMMENTS
 - Staff Report: Community Development Department

7:30 PM

1. BUSINESS MEETING
 - 1.1 Call to Order - City Council & Local Contract Review Board
 - 1.2 Roll Call
 - 1.3 Pledge of Allegiance
 - 1.4 Council Communications & Liaison Reports
 - 1.5 Call to Council and Staff for Non-Agenda Items
2. VISITOR'S AGENDA (Two Minutes or Less, Please)
 - Tigard High School Student Envoy Nathan Leamy
3. CONSENT AGENDA: These items are considered to be routine and may be enacted in one motion without separate discussion. Anyone may request that an item be removed by motion for discussion and separate action. Motion to:
 - 3.1 Approve Council Minutes for August 28 and September 18, 2001

- 3.2 Receive and File:
 - a. Council Calendar
 - b. Tentative Agenda
- 3.3 Appoint Bret A. Johnson as a Tree Board Member and Brooks Gaston as a Tree Board Alternate
- 3.4 Approve City Manager's Recommendations for Representation on the Cooperative Library Advisory Board
- 3.5 Local Contract Review Board
 - a. Award Bid for the Construction of the SW Gaarde Street Pressure Reducing Valve Vault (CIP No. W01-101) to W.G. Moe & Sons
- *Consent Agenda - Items Removed for Separate Discussion: Any items requested to be removed from the Consent Agenda for separate discussion will be considered immediately after the Council has voted on those items which do not need discussion.*
- 4. CONSIDER AMENDMENT TO CHAPTER 5.12 OF THE TIGARD MUNICIPAL CODE PERTAINING TO REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM
 - a. Staff Report: Administration and Finance Departments
 - b. Council Questions and Discussion
 - c. Consideration of Ordinance No. 01-_____
- 5. INTRODUCE BRET A. JOHNSON AS NEWLY APPOINTED TREE BOARD MEMBER AND BROOKS GASTON AS NEWLY APPOINTED TREE BOARD ALTERNATE
 - a. Welcome to New Tree Board Members: Mayor Griffith
- 6. CONSIDER AUTHORIZING A LOAN FROM THE SPECIAL PUBLIC WORKS FUND BY ENTERING INTO A LOAN CONTRACT WITH THE OREGON ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT
 - a. Staff Report: Finance Department
 - b. Council Questions and Discussion
 - c. Consideration of Resolution No. 01-_____

7. INFORMATIONAL PUBLIC HEARING - FINALIZE FORMATION OF SANITARY SEWER REIMBURSEMENT DISTRICT NO. 18 ESTABLISHED TO INSTALL SEWERS IN SW WALNUT STREET AND SW 121ST AVENUE
 - a. Open Public Hearing
 - b. Staff Report: Engineering Staff
 - c. Public Testimony
 - d. Council Discussion, Questions, Comments
 - e. Staff Recommendation
 - f. Close Public Hearing
 - g. Council Motion: Should Council approve the finalization of Sanitary Sewer Reimbursement District No. 18?
8. REVIEW UPDATE ON FANNO CREEK TRAIL
 - a. Staff Report: Community Development Department
 - b. Council Questions and Discussion
9. REVIEW REPORT ON MAINTENANCE OF MERESTONE POND (SW 121ST AVENUE)
 - a. Staff Report: Engineering Department
 - b. Council Questions and Discussion
10. CONSIDER AMENDMENT TO CHAPTER 11.08 OF THE TIGARD MUNICIPAL CODE PERTAINING TO BURGLARY AND ROBBERY ALARM SYSTEMS
 - a. Staff Report: Police Department
 - b. Council Questions and Discussion
 - c. Consideration of Ordinance No. 01-_____
11. CONSIDER ELIMINATION OF CHAPTER 2.06 OF THE TIGARD MUNICIPAL CODE PERTAINING TO RESIDENCY REQUIREMENTS
 - a. Staff Report: Administration Department
 - b. Council Questions and Discussion
 - c. Consideration of Ordinance No. 01-_____
12. COUNCIL LIAISON REPORTS

13. NON AGENDA ITEMS

14. EXECUTIVE SESSION: The Tigard City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(3), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

15. ADJOURNMENT

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MEMORANDUM

TO: Honorable Mayor and City Council

FROM: Ronald D. Goodpaster
Chief of Police

DATE: November 2, 2001

SUBJECT: Police Consolidation

The purpose of the presentation on Tuesday is to present the results of the recently conducted telephone poll on the issue of consolidating all law enforcement in Washington County and to receive some direction from you regarding this issue. After reading and reviewing the poll results, I am not convinced it supports consolidation; and I look forward to our review and discussion. A copy of the poll results and the most recent news articles regarding this issue are attached for your review.

I'm still not convinced that total consolidation is in the best interest of our citizens, the City of Tigard, or public safety. As I have previously advised, my main concerns remain: cost, service and local control.

I do believe that it is in all of our best interests to pursue the "Cogan Report" and to do as much as we in law enforcement can in partnering, sharing, and communicating. We have already taken numerous steps towards these goals, and more is being done.

I would like to ask the Council for direction on this issue. The telephone calls and media inquiries have begun. I want to make sure I am accurately reflecting your position.

If you have any questions or concerns regarding this, please contact me at your convenience. My work number is (503) 639-6168, and my pager number is (503) 796-4899.

Poll: Public likes idea of police consolidation

With a supportive survey in hand, a countywide police officers association will ask local governments to fund a study of the plan

By KEVIN HARDEN
Of the Times

A new opinion survey says that a proposal to consolidate Washington County's 12 police departments into one agency could have widespread public support.

A mid-July poll for the Washington County Police Officers Association found that about 56 percent of residents surveyed supported the consolidation idea. About 39 percent of the residents said they opposed the idea.

As a result of the poll, the police officers' association will push city and county officials to fund a study of the consolidation plan. The association hopes the study will eventually lead to either a merger of the 12 police agencies and the sheriff's office, or consolidation of some countywide police functions to save money and improve response times.

"The police officers throughout Washington County have known for years that there's an unbelievable amount of waste and redundancy in having a dozen different police agencies," said Todd Duncan, Washington County Police Officers Association president. "Until now, we haven't known for sure how the taxpayers felt about this

issue. This survey tells us that they are more than ready to take a serious look at merging police agencies."

Results of the public opinion poll will be released this morning during a press conference at Beaverton City Library.

Sheriff's Deputy Dale Swall, a member of the police officers' association, said the group was willing to put up \$10,000 to fund the consolidation study. The association probably would ask local governments to match that amount, Swall said.

Several police chiefs and Sheriff Jim Spinden said they would consider the possibility of a consolidation study, but they would like to see evidence that merging the police departments would save money and benefit county residents.

"I think the concept of studying consolidation is valid," Spinden said. "There's lots of information out there now. The police chiefs and I have been talking about doing a study of that, so this is certainly timely."

Beaverton Police Chief David G. Bishop said he thought the consolidation proposal was a positive step, similar to the work that area police agencies do on combined teams to handle major crimes, hostage negotiations, narcotics crimes and gangs.

"I think that's all positive," Bishop said. "Could we do more? Yes, we could, in other areas."

"But to have one big agency, at this point I'm not sure what the benefits could be as far as savings."

Tigard Police Chief Ron Goodpaster said he was concerned about how much the consolidation would cost, how services would improve under a single agency and how the agency would be gov-

erned.

"I think they're all huge concerns," Goodpaster said. "If they do a study, I would hope that those would be addressed. I think even as a local taxpayer, I'd want to know those answers."

On the ballot

A similar idea was floated two years ago when the county funded a study of ways to improve law enforcement efficiency by sharing some duties and programs. A May 2000 report by Portland's Cogan Owens Cogan consulting firm recommended that police agencies cooperate during the next five years on more than a dozen issues, such as a central records system, transporting prisoners, working with juveniles and using new technology.

During the past year, police agencies across the county have discussed the Cogan Owens Cogan plan, but few of the recommendations have been put in place.

In the recent public opinion survey, the Portland research firm of Davis, Hibbitts and McCaig talked to about 400 Washington County residents from July 11 to 15 about the possibility of consolidating police agencies. Researchers asked a dozen questions about the possible merger, with most people favoring consolidation as a way to save money and

improve services.

That survey came after a similar poll found that 90 percent of patrol officers and detectives in all of the county's police agencies supported consolidation.

Ron Massey, a member of Beaverton's police advisory board who has spearheaded the consolidation effort for the past two years, said a single law enforcement agency could be run similar to the Tualatin Valley Fire and Rescue, which operates nearly all of the fire stations across the county. The fire district is governed by an elected board of directors.

"We know the police officers want to do this, and the public wants to do this, so why don't we pay for a study to see if it is a good idea that will work," Massey said.

Massey said the county and the cities should fund a study of the issue in the next 90 days. If political leaders try to block the study, a consolidation plan might be ripe for a countywide ballot initiative, he said.

"It would be a shame to enact a major change in our law enforcement infrastructure without the benefit of a comprehensive study," Massey said. "I am hopeful that our local leaders will recognize the significance of this issue and will cooperate in a mutually funded analysis of the subject."

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| • BUNIONS | • CONGENITAL | • PROLONGED |
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OPINION

Observing police led to idea for major merger

My interest in the possible merger of Washington County law enforcement agencies came from my involvement on the citizen advisory boards for both the Beaverton Police Department and the Washington County Sheriff's Office. Both are superb agencies.

When I was appointed, I knew nothing about law enforcement. So I spent time with patrol officers, sheriff's deputies, 9-1-1 operators and detectives throughout the county. It was enormously educational to learn about police work from the people who work on the front lines every day.

However, I soon learned of numerous flaws associated with operating 12 separately functioning police bureaucracies. As a businessperson, I recognized that the independent operational structure of these 12 agencies created tremendous inefficiencies, redundancies, interagency conflicts and way too many political machinations.

Basically, Washington County law enforcement was going off in 12 different directions with no shared vision or plan. It was a disorganized system that hadn't changed much in more than 50 years.

When I questioned the police chiefs about these inefficiencies and the possibility of merging

agencies, I was told that citizens and police officers liked things the way they were. Case closed.

Fire agency an example

Having witnessed the success of the merger that created Tualatin Valley Fire & Rescue, I thought a similar merger might work for law enforcement. I studied the fire agency and spent a couple of shifts with crews.

I heard firsthand accounts of how merging three fire agencies improved public safety and reduced costly inefficiencies. The firefighters, many of whom originally had been skeptical about merging, were passionate advocates for emergency service consolidation.

I polled Washington County's police officers about the idea. It took nearly nine months, but in the end nearly 90 percent of the patrol officers and detectives across the county said that they were interested in merging and thought the idea deserved further study.

In July, the Washington County Police Officers Association paid pollster Tim Hibbits to conduct a public poll regarding a countywide police agency merger. The results, released last month, indicate significant public support for merging Washington County's 12 police agencies.

Armed with the support of police officers and taxpayers (not to

mention editorial endorsement), I am asking the county and city governments to pay for a comprehensive, credible and impartial study of law enforcement consolidation.

Unfortunately, many of the elected and appointed leaders don't share my enthusiasm and interest for merging our police agencies.

Last week, I read about recent closed-door meetings among police chiefs, mayors and county officials, who discussed how they could kill the idea of a police merger before it had a chance of gaining support in the community ("Poll finds support for merging police," Metro/Washington County, Oct. 19). It seems that many of our local leaders would prefer discrediting the notion of a law enforcement merger to taking the time to study it.

Fiscal incentives

Although the No. 1 reason for a police merger would be to improve

MY TURN POLICY

Do you have an issue you feel strongly about? An experience you want to share? "My Turn" is an opportunity to express yourself. Submissions should be about 800 words, or three typewritten, double-spaced pages. My Turn material should be written exclusively for The Oregonian and is subject to editing. All submissions become the property of The Oregonian and will not be returned; submissions may be edited and may be published or otherwise used in any medium.

Write to: Southwest Bureau, The Oregonian, 15495 S.W. Sequoia Parkway, Portland, Ore. 97224, or send a fax to 503-968-6061. Please include a telephone number where we can reach you during the day.

enforcement services.

That money could be used for schools or transportation projects or simply returned to residents in the form of lower property taxes.

I realize that local leaders don't like outsiders who rock the boat and mess with their sacred-cow agencies. Unfortunately, those elected and appointed leaders need to remember that they serve the citizens, not the other way around. While I appreciate that there could be obstacles to an across-the-board merger of police agencies, the issue is worthy of further study.

I hope that our elected and appointed leaders will put aside their largely provincial political arguments and provide the credible study that Washington County residents deserve to see. The taxpayers and police officers deserve nothing less.

Ronald Massey lives in Cedar Mill. He can be reached at ronaldgmassey@juno.com.

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Survey finds support for police consolidation

City and county law enforcement officials say they don't have time or money to study the proposal

By RYAN FRANK
THE OREGONIAN

BEAVERTON — A private poll released Thursday shows that a majority of Washington County residents favor merging the county's 12 police agencies into one Portland-sized department.

The county's four largest police officers' unions and Sheriff Jim Spinden support further study of the idea.

But many city and county leaders and police chiefs said Thursday

they won't pay to explore the idea until proponents of the plan make a more specific proposal. They said county residents are pleased with the current structure of 11 city police departments and one county-wide sheriff's office.

Ron Massey, 41, of Cedar Mill, the chief campaigner for consolidation, said one countywide department would rid taxpayers of redundant, ineffective and costly police service.

At a news conference Thursday before about 20 police officers and news reporters, Massey unveiled the poll's results and asked city and county leaders to "team up to jointly fund a credible and impartial study" of the merger within three months.

The Washington County Police

Officers Association paid \$10,000 for the poll conducted in July by the Portland firm of Davis, Hibbits and McCaig Inc. The survey asked 14 questions: Seven were framed with a positive argument for consolidation, five with a negative argument and two with a neutral approach.

After hearing arguments for and against consolidation, 21 percent of the 400 people polled said they strongly favored the idea, 35 percent somewhat favored it, 19 percent somewhat opposed it, and 20 percent strongly opposed it. Others refused or did not answer.

"It's a great idea that needs to come to pass," said Senior Deputy Todd Duncan, president of the Washington County Police Officers Association.

In his arguments for consolidation, Massey points to the numbers: Portland has 529,121 people and one police bureau; Washington County has 445,342 people and 12 police agencies.

Massey said he does not know how much money could be saved, how many officers would be needed or even how consolidation would take place. That would be part of the government study, he said.

Massey, who sits on committees that advise Beaverton Chief David G. Bishop and Spinden, said he feels as if he is "pushing water up a hill" because city and county officials won't listen to his ideas.

In September, Beaverton Mayor Rob Drake organized a meeting of police chiefs and city managers to

talk about Massey's efforts and a separate year-old study of cooperation among police departments.

"There was absolute and total agreement that no one at the table had any interest in studying 'police' consolidation," Chief Deputy Sherre Calouri of the Washington County Sheriff's Office wrote in a post-meeting e-mail to the office's administrators.

In her e-mail, Calouri estimated a consultant would cost \$500,000, and "no one had the money to do that."

Tualatin Mayor Lou Ogden said, "There's got to be a reason for doing it, not just because someone demands it."

Drake called Massey's request for a government-financed study within three months "absurd."

Ogden, County Administrator Charles Cameron, Forest Grove Mayor Richard Kidd, and Tigard Mayor Jim Griffith said they would need to hear more details of a proposed consolidation plan before they offer any money for a study.

In May 2000, the county released a study by the Portland firm Cogan Owens Cogan to clarify the relationship between the sheriff's office, the county's largest law enforcement department and the city police departments.

None of the study's recommendations have been implemented. One idea, a prisoner shuttle to the jail, will begin in December, Spinden said. Administrators say they are working on carrying out more recommendations within the next year.



Drawing water from river on ballot

FOR IMMEDIATE RELEASE:

WASHINGTON COUNTY RESIDENTS SUPPORT MERGING LAW ENFORCEMENT AGENCIES

October 18, 2001

The Washington County Police Officers Association (WCPOA) today released the results of a public opinion poll concerning the issue of merging law enforcement agencies within Washington County.

The poll, (conducted by the respected opinion research firm of Davis, Hibbitts, and McCaig) indicates that there is significant public support for the idea of consolidating the 12 different police departments currently operating in Washington County into a single county-wide police agency.

The telephone survey reflects the responses of 400 registered voters in Washington County. The poll was conducted July 11th - 15th and posed a series of questions regarding law enforcement within Oregon's second most populous county. According to pollster Tim Hibbitts, "We crafted the questions to get an accurate reaction from voters after they had heard the pro and con arguments related to the idea of a police merger". The survey reflects the attitudes and opinions of voters all across Oregon's fastest growing county. Nearly two-thirds of those surveyed have resided in Washington County for more than 10 years.

-----▽-----▽-----▽-----▽-----▽-----▽-----▽-----
This public opinion poll follows on the heels of recent in-house surveys of patrol officers and detectives at the 12 different police agencies within Washington County. "The police officers throughout Washington County have known for years that there's an unbelievable amount of waste and redundancy in having a dozen different police agencies" says Todd Duncan, President WCPOA. Duncan went on to say that: "Until now, we haven't known for sure how the taxpayers felt about this issue....this survey tells us that they (the taxpayers) are more than ready to take a serious look at merging police agencies".

According to recent in-house polls, nearly 90% of detectives and patrol officers at police agencies throughout Washington County support further study of merging together to create a single agency similar to Tualatin Valley Fire & Rescue (TVF&R). Tualatin Valley Fire & Rescue was the result of a multi-agency merger that created what is today Oregon's second largest fire department serving Beaverton, Tigard, Tualatin, Sherwood, King City, Cedar Mill, Aloha, and most recently the cities of West Linn and Oregon City.

The survey asked voters a series of questions regarding the issue of merging together Washington County's 12 different police agencies. Here are the final results of the survey:

"There has been some discussion recently about merging all of the police departments in Washington County into one department. Have you heard or read anything about this"

YES	21%
NO	79%

"I would like to read some reasons people have given for supporting the idea of merging all of the police departments in Washington County into one department. For each reason I read, please tell me if you think it is a very good, good, poor, or very poor reason to support merging all police departments in Washington County into one police department"

- Some 90% of the street police officers and detectives in Washington County favor merging police departments in the county into one agency.

Very good	20%
Good	44%
Poor	22%
Very Poor	8%
DK/NA/Refused	7%

- This merger would be similar to the one that created Tualatin Valley Fire and Rescue. That merger has worked out very well for the citizens of the county.

Very Good	20%
Good	58%
Poor	13%
Very Poor	4%
DK/NA/Refused	7%

- As the merger takes effect, it will result in cost savings by eliminating duplication of police services.

Very Good	30%
Good	47%
Poor	15%
Very Poor	5%
DK/NA/Refused	4%

- Creating one police department in Washington County would mean that only one department would pay for equipment, training, and recruiting, something that 12 different police agencies are now doing separately.

Very Good	34%
Good	44%
Poor	15%
Very Poor	5%
DK/NA/Refused	3%

- A merger of all Washington County police departments into one would allow criminal records, evidence storage, traffic enforcement, and detectives to be placed under one agency, not twelve different agencies.

Very Good	36%
Good	41%
Poor	15%
Very Poor	6%
DK/NA/Refused	3%

- Residents of cities in Washington County are paying twice for law enforcement for their city and for the county. Merging police departments would end this practice.

Very Good	34%
Good	38%
Poor	17%
Very Poor	6%
DK/NA/Refused	5%

- Merging all Washington County police departments into one should improve police response times in Washington County.

Very Good	32%
Good	40%
Poor	17%
Very Poor	6%
DK/NA/Refused	6%

"On the other side of the coin, here are some reasons to oppose merging all police departments in Washington County into one agency. For each reason, please tell me if you think it is a very good, good, poor, or very poor reason to oppose merging all police agencies in Washington County into one police department"

- Merging all Washington County police departments into one could mean a loss of local control for towns in Washington County

Very Good	18%
Good	33%
Poor	37%
Very Poor	8%
DK/NA/Refused	4%

- Merging all Washington County police departments into one could create a police union that would be too powerful

Very Good	16%
Good	23%
Poor	42%
Very Poor	14%
DK/NA/Refused	6%

- Merging all police in Washington County could hurt small cities like North Plains and Banks that might not be able to pay for the same level of police service at a higher cost-per-officer.

Very Good	19%
Good	37%
Poor	25%
Very Poor	10%
DK/NA/Refused	10%

- Each Police department in Washington County has a different approach to policing tailored to that community's needs. Consolidating all police departments into one agency would cause local communities to lose their local police identity.

Very Good	19%
Good	34%
Poor	31%
Very Poor	13%
DK/NA/Refused	4%

- Merging all police in Washington County into one department could wind up creating a police department that is too big and cumbersome to respond effectively to problems.

Very Good	19%
Good	26%
Poor	36%
Very Poor	13%
DK/NA/Refused	6%

"Now that you have heard some arguments in favor of, and opposed to merging all police departments in Washington County, would you say that you strongly favor, somewhat favor, somewhat oppose, or strongly oppose the idea?"

Strongly Favor	21%
Somewhat Favor	35%
Somewhat Oppose	19%
Strongly Oppose	20%
DK/NA/Refused	7%

Based on the feedback from taxpayers and police officers across Washington County, The WCPOA is calling upon the municipal and county governments to fund a credible, impartial, and comprehensive study of the benefits and potential obstacles to merging the 12 police agencies now operating in Washington County. This proposed study, which should begin in no more than 90 days, has already been endorsed by a recent Oregonian editorial (7/13/01).

The Washington County Police Officers Association feels that a comprehensive consolidation study would serve as a roadmap for improving Washington County's law enforcement infrastructure, and could also be used to identify areas of financial waste and operational redundancy. The WCPOA strongly believes that wasted taxpayer dollars would be better spent on important community needs (like our schools) or simply returned to county residents in the form of lower property taxes.

For Further information contact Ron Massey at (503) 297-7473 or (503) 705-9497

About the survey...

The Telephone survey was conducted July 11th -15th by the public opinion firm of Davis, Hibbitts & McCaig in Portland. The 400 survey respondents (all registered voters) were Washington County residents who were categorized as being "most likely" regular voters. Here is a profile of the survey respondents:

AGE:		
	18-34	16%
	35-54	45%
	55+	37%
	Refused	3%

YEARS OF RESIDENCY IN WASHINGTON COUNTY:

Less than 5 years	19%
6-10 years	18%
11-20 years	18%
20 Years or more	46%

GENDER:

Male:	48%
Female:	52%

POLITICAL AFFILIATION:

Democrat:	39%
Republican	41%
Ind / Other	20%

AREA:

Western WA Co:	31%
Eastern WA Co:	69%

Agenda Item No. _____
Meeting of __November 13, 2001__

Packet Materials for

BULL MOUNTAIN DRAFT STUDY COMMENTS

will be available on Friday, November 9, 2001

Contact the City Recorder's Office at 503-639-4171
for more information

MINUTES
TIGARD CITY COUNCIL MEETING
AUGUST 28, 2001

Council Present: Mayor Griffith, Councilors Dirksen, Moore, Patton, and Scheckla

- EXECUTIVE SESSION: The Tigard City Council went into Executive Session at 6:32 p.m. to discuss labor negotiations under ORS 192.660(1d).

Council convened into Study Session at 7:00 p.m.

- STUDY SESSION

- > STRATEGIC PLANNING DISCUSSION

City Manager Monahan led the discussion on strategic planning. Mr. Monahan referred to information summarized from an Executive Staff review of the strategic plan. Mr. Monahan noted the financial issues facing the City of Tigard.

Council discussed tax increment financing options that may work for the Washington Square area. In response to a comment from Councilor Scheckla that Metro should also contribute to the Washington Square area, Mr. Monahan advised that Metro is a clearinghouse for funding; therefore, it is valuable to have a plan in place to justify requests for funding.

Mr. Monahan referred to information distributed to the City Council with regard to the Washington County cities' tax rate comparison. (Tax rate comparison table is on file with the City Recorder.) He noted that Tigard compares favorably to other cities in Washington County. Staff has determined a need to evaluate current fees and consider potential fees to ensure that the people who are requesting services are paying for services. With regard to the information distributed to the City Council, Mr. Monahan noted that the Financial Plan is a living document that is a tool for planning and adjusting. Councilor Dirksen noted the benefit of establishing a priority list is to promote a "domino effect" that make it more clear as to which priority must be addressed first before another can be brought forward.

- > ADMINISTRATIVE ITEMS

- Council reviewed a memorandum from Barbara Shields, Long Range Planning Manager regarding Metro 2040 Fundamentals Discussion. A recent public opinion survey was prepared by Metro to develop

information regarding public attitudes in the region toward growth management. A complete report will be sent to the City of Tigard soon. Councilor Scheckla asked for a copy of the full report when received.

- City Manager noted that joint meeting with the City of Tualatin is scheduled for October 15 in Tualatin to begin at 6 or 6:30. Details are being finalized.
- The League of Oregon Cities' (LOC) request for assistance to fund litigation that challenges cities' authority to charge franchise fees for the use of telecommunications in public right of way was discussed. Council received a memorandum dated August 27, 2001, to Bill Monahan from Craig Prosser regarding this issue and a copy of this memorandum is on file with the City Recorder. Consensus of Council was to support staff's recommendation to support LOC's request for assistance in funding legal fees in this litigation.
- Council briefly discussed the plans for the upcoming meeting to celebrate the City's 40th birthday, September 11, 2001.
- City Manager Monahan noted that Attorney Ed Sullivan has asked for a waiver of conflict of interest to represent Ken Rea, who desires to convert a home on Tigard Street to an office. After brief discussion, consensus of the City Council was to approve a waiver of conflict interest.

Business meeting convened at 7:30 p.m.

1. BUSINESS MEETING

- 1.1 Call to Order - City Council & Local Contract Review Board
- 1.2 Roll Call - Present: Mayor Griffith; Councilors Dirksen, Moore, Patton, and Scheckla
- 1.3 Pledge of Allegiance
- 1.4 Council Communications & Liaison Reports: None.
- 1.5 Call to Council and Staff for Non-Agenda Items: None.

2. VISITOR'S AGENDA: None.

3. PROCLAMATIONS:

Mayor Griffith issued the following proclamations:

- a. Proclamation - Disability Employment Awareness Month, October 2001
- b. Proclamation - National Alcohol and Drug Addiction Recovery Month, September 2001
- c. Proclamation - Undoing Racism Day, September 20, 2001

4. CONSENT AGENDA - Motion by Councilor Moore, seconded by Councilor Patton, to approve the Consent Agenda:
 - 4.1 Approve Council Minutes: June 26, 2001
 - 4.2 Local Contract Review Board
 - a. Award Contract for the Construction of Fiscal Year 2001-2002 Pavement Major Maintenance Program to Eagle-Elsner
 - b. Award Contract for the Construction of Fanno Creek Trail – Segment 3 (Tiedeman Avenue to Woodard Park) to Tri-Mountain Excavating
 - c. Approve Purchase of Four 2002 Ford Victorias from Gresham Ford
 - 4.3 Support Participation in the ICMA International Resource Cities Program – Resolution No. 01-53

The motion was approved by a unanimous vote of City Council present:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	Yes

5. RECOGNITION OF NANCY IRWIN AND LARRY BECK FOR SERVICE ON THE LIBRARY BOARD

Mayor Griffith presented to Nancy Irwin a Certificate of Appreciation and a City of Tigard logo pin. (Mr. Beck was unable to attend the meeting.)

6. CONSIDER APPROVING THE NEW TIGARD LIBRARY CONSTRUCTION COMMITTEE'S RECOMMENDED SITE FOR THE PROPOSED NEW LIBRARY

Library Director Margaret Barnes introduced New Library Construction Committee members George Burgess and David Chapman. A PowerPoint presentation was reviewed with the City Council and is on file with the City Recorder. Mr. Burgess gave background of the Committee's membership and reviewed that "Site E" was the site the Committee recommended for the proposed new library. This site is located along the east side of Hall Boulevard across from the intersection at O'Mara Street. A digital photograph is on file with the City Recorder depicting the site location.

Mr. Burgess also reviewed the criteria established by the Committee for site selection. He asked the City Council to accept this site.

Mr. Chapman noted that the New Library Construction Committee unanimously selected "Site E." He asked that the City Council direct City Staff to enter negotiations to enter into negotiations with the property owner to place an option on the site.

Discussion followed with the City Council members. It was noted that nothing in the proposed concept for the building or site development would affect the wetland area.

Motion by Councilor Dirksen, seconded by Councilor Moore, to accept "Site E."

The motion was approved by a unanimous of City Council present:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	Yes

Motion by Councilor Moore, seconded by Councilor Patton, to authorize the staff to enter into negotiations with the property owner for an option on the property.

The motion was approved by a unanimous of City Council present:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	Yes

7. HEAR AN INITIAL PROGRESS REPORT FROM THE TRANSPORTATION FINANCING STRATEGIES TASK FORCE

City Engineer Gus Duenas introduced Task Force Member Bev Froude. A PowerPoint presentation was reviewed with the City Council and copy of the presentation is on file with the City Recorder.

The Task Force was formed by the City Council to evaluate reasons for failure of the November 2000 transportation bond measure and to determine funding strategies. The Task Force met four times since April 2001. Tonight's report is the initial report to the City Council. The Task Force is seriously considering recommending implementation of a street utility fee for maintenance and is continuing to review other funding sources for street improvements. The presentation included an in-depth look at street maintenance, including preventative and corrective maintenance.

Funding is also needed for widening and reconstruction of major collectors to meet existing and future traffic demands and to meet current geometric alignment standards. It was noted that preventative maintenance pays off by increasing the life of a street before major work is needed.

After the presentation, City Council discussed the feasibility of implementing a street utility fee for the City of Tigard. Majority consensus of City Council was favorable. Councilor Scheckla said he was reluctant to agree to this type of fee and was concerned about how this would be accepted by citizens. He also referred to past issues he has had concerning SW North Dakota Street.

Motion by Councilor Patton, seconded by Councilor Moore, to go forward with the study of the street maintenance fee.

The motion was approved by a majority of City Council present:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	No

In response to a question from Mayor Griffith about whether the Task Force is looking into a proposing a bond measure, Councilor Moore advised that at this time such an effort has been set aside and possibly reconsidered in about three years.

8. QUASI-JUDICIAL PUBLIC HEARING – CONSIDER AN ORDINANCE VACATING APPROXIMATELY 11,702 SQUARE FEET OF PUBLIC RIGHT OF WAY ON SW BEVELAND STREET, IN THE CITY OF TIGARD, WASHINGTON COUNTY, OREGON (VAC2001-00002)

REQUEST: The applicant is requesting that the City of Tigard vacate an unused portion of public right of way on SW Beveland Street, west of SW 72nd Avenue. Southwest Beveland Street west of SW 72nd Avenue has been relocated south to align directly with SW Beveland Street east of SW 72nd Avenue. The new alignment was constructed across tax lots 2S101AB-02705, 2S101AB-02706 and 2S101AB-02707, which are owned by Lowe's Hardware. The purpose for the relocation was to ensure better traffic flow at the SW Beveland/SW 72nd intersection. The land needed for that improvement and the associated right of way was dedicated by Lowe's Hardware to the City of Tigard. As a result of the relocation, the old right of way for SW Beveland Street has effectively been abandoned. **LOCATION:** The section of SW Beveland Street public right of way, which lies west of SW 72nd Avenue. Date request was filed: May 15, 2001

- a. Mayor Griffith opened the public hearing.
- b. Mayor Griffith asked for declarations or challenges. There were none.
- c. Community Development Director Jim Hendryx presented the staff report. The City Council was considering the vacation of a portion, approximately 11,702 square feet, of public right-of-way in what is commonly known as SW Beveland Street.
- d. Public Testimony:
 - Frank Flynn, Attorney, Stoel Rives, et al, 900 SW Fifth Avenue, Portland, Oregon. Mr. Flynn reported on negotiations among property owners (Mr. and Mrs. Stober and Mr. Wood). Mr. Flynn explained the process wherein the Stobers asked to be reassured that they would maintain full access to their property. Negotiations have been ongoing with regard to the access and easement width.

The easement width needs to be modified. City Attorney Ramis advised that a change to the easement width does not appear to be a substantial change. Community Development Director Hendryx confirmed that staff reviewed the request for a change in the easement's width.

- e. Staff recommended the vacation request be approved as modified by the applicant.
- f. Mayor Griffith closed the public hearing.
- g. Council consideration:

Motion by Councilor Scheckla, seconded by Councilor Dirksen, to adopt Ordinance No. 01-11.

ORDINANCE NO. 01-11 – AN ORDINANCE CONCERNING VACATION OF APPROXIMATELY 11,702 SQUARE FEET OF PUBLIC RIGHT OF WAY ON SW BEVELAND STREET, IN THE CITY OF TIGARD, WASHINGTON COUNTY, OREGON (VAC 2001-00002).

The motion was approved by a unanimous of City Council present:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	Yes

9. CONSIDERATION OF A RESOLUTION ADOPTING THE FINAL ORDER APPROVING THE BLUE HERON PARK SUBDIVISION (SUB2001-00001, ZON2001-00002, SLR2001-00003, VAR2001-0002)

On June 11, 2001, the Planning Commission denied a request for approval of an 18-lot subdivision on 4.15 acres. The lots are to be developed with attached single-family homes. Lot sizes within the development average just over 3,800 square feet. Development is to be clustered on the west side of the development site, allowing for the preservation and enhancement of the pond, wetland, and stream area on the eastern portion of the property. A sensitive lands review is required for the development due to the presence of steep slopes, a wetland, and a natural drainageway on the site. On June 22, 2001, an appeal was filed regarding the Planning Commission's denial of the project. On August 14, 2001, the Council held a public hearing on the appeal; the proposed resolution adopting the Final Order is now before the Council. **LOCATION:** 12450 SW Walnut Street; WCTM 2S103BC-03900. The project site is located on the south side of SW Walnut Street, opposite of SW 124th Avenue and west of SW 121st Avenue. **ZONE:** R-4.5: Low-Density Residential District. The R-4.5 zoning district is designed to accommodate detached single-family homes with or without accessory residential units at a minimum lot size of 7,500 square feet. Duplexes and attached single-family units are permitted conditionally. Some civic and institutional uses are also permitted conditionally. **REVIEW CRITERIA BEING APPEALED:** Community Development Code Chapter 18.390.

Planning Manager Dick Bewersdorff presented the staff report. Mr. Bewersdorff highlighted the elements of the Final Order, including four additional City Council conditions. The four conditions addressed fencing adjacent to dwelling units, the planting of two-inch caliper trees in setbacks, establishment of an escrow account to recover damage to retained trees over 12 inches in caliper, and study of the need for a painted crosswalk at the intersection of 124th Avenue and a private street. City Council discussed elements of the findings. It was noted that the development will have good-neighbor fencing on the developed portion of the site.

There was lengthy discussion on the escrow account to recover damage to retained trees over 12 inches in caliper. Fifty-one trees were potentially affected by construction. Total value for these trees was estimated to be approximately \$200,000. Safeguards to protect trees included the provision that the applicants are responsible for the trees and if damage occurs, then \$47,000 would be charged for additional mitigation.

Mr. Matt Sprague and Mr. Al Jeck were present to represent the applicant. Mr. Jeck advised that the third condition added by the City Council with regard to the

security to cover the value of the trees was of concern. He asked for flexibility in the pledging of funds to meet the intent of the third condition, which is to protect trees. There was discussion with regard to how such wording should be set forth in the Final Order. Councilor Moore said the wanted to be sure that the trees were protected, but also not encumber the development with an unnecessary requirement. If a line-of-credit would accomplish the intent of this condition, then this would be acceptable to Councilor Moore. City Attorney Ramis suggested using the word "security" in a form acceptable to Planning Director in the amount of \$100,000 to cover the value of all 12-inch or greater trees. It was noted that the proposed resolution would need to be amended to reflect this change.

Motion by Councilor Moore, second by Councilor Dirksen, to adopt Resolution No. 01-54 with the Findings and Final Order as amended to be signed after review by the Mayor.

Councilor Dirksen clarified that the damage to trees, as referred to in the Final Order, would be "caused by construction."

Motion was approved by a majority of City Council present:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	No

Council meeting recessed at 9:00 p.m.

Council meeting reconvened at 9:10 p.m.

10. PUBLIC HEARING - CONSIDER A ZONE ORDINANCE AMENDMENT TO EXEMPT CERTAIN EXISTING BUILDINGS ABUTTING MAIN STREET FROM ADDITIONAL OFF-STREET PARKING IN CERTAIN CIRCUMSTANCES (ZOA2000-00004), AMENDING CHAPTER 18.765 OF THE TIGARD COMMUNITY DEVELOPMENT CODE

The City of Tigard is requesting approval of a Zone Ordinance Amendment to allow existing buildings directly abutting Main Street to be exempt from having to add additional off-street parking for a change of use. However, construction of new buildings and entertainment uses abutting Main Street will be required to meet the off-street parking standards according to Table 18.765.2 (Minimum and Maximum Required Off-Street Vehicle and Bicycle Parking Requirements) in the Tigard Community Development Code. **LOCATION:** All properties abutting SW Main

Street. **ZONE:** CBD: Central Business District. The CBD zoning district is designed to provide a concentrated central business district, centered on the City's historic downtown, including a mix of civic retail and office uses. Single-family attached housing, at a maximum density of 12 units/net acre, equivalent to the R-40 zoning district, are permitted outright. A wide range of uses, including but not limited to adult entertainment, utilities, facilities with drive-up windows, medical centers, major event entertainment and gasoline stations, are permitted conditionally. **APPLICABLE REVIEW CRITERIA:** Statewide Planning Goals 1, 2, 5 and 9; Comprehensive Plan Policies 1.1.1, 2.1.1, 2.1.2, 2.1.3 and 5.3; and Community Development Code Chapters 18.380, 18.390 and 18.765.

- a. Mayor Griffith opened the public hearing
- b. Community Development Director Jim Hendryx presented the staff report. The issue before the City Council was whether the City Council should adopt an ordinance that would allow existing buildings directly abutting SW Main Street to be exempt from having to add additional off-street parking for a change of use and new construction to replace existing square footage. Construction of new buildings and entertainment uses abutting SW Main Street would be required to meet off-street parking standards according to Table 18.765.2 of the Tigard Community Development Code.

Note: The Council considered Agenda Item No. 11 at this point in the meeting while Community Director Hendryx researched the Code to determine how entertainment uses would be affected with respect to the proposed revisions to the Code. He advised that, as an example, a bingo parlor would be required to meet off-street parking requirements.

- c. Public Testimony: None.
- d. Staff recommended that the City Council adopt the proposed ordinance.
- e. Mayor Griffith closed the public hearing.
- f. Council consideration:

Motion by Councilor Patton, seconded by Councilor Moore. to adopt Ordinance No. 01-12.

ORDINANCE NO. 01-12 – A ZONE ORDINANCE AMENDMENT (ZOA 2000-00004) AMENDING CHAPTER 18.764 OF THE TIGARD COMMUNITY DEVELOPMENT CODE.

The motion was approved by a unanimous of City Council present:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	Yes

11. CONSIDER AN ORDINANCE AMENDING THE TIGARD MUNICIPAL CODE REGARDING PERMIT ISSUANCE CONDITIONS FOR OVERSIZED LOADS

City Manager Bill Monahan reviewed the staff report prepared by Chief of Police Ron Goodpaster. He noted restrictions for moving of oversized loads would apply during weekday time periods. Because Council members had questions with regard to the Code language for weekend activity, consideration on this item would be delayed until Chief Goodpaster could clarify his intent with weekend activity. This item was set over to September 25, 2001. (City Recorder's note: City Council reviewed this item on October 9, 2001.)

12. CONSIDER AN ORDINANCE AMENDING THE TIGARD MUNICIPAL CODE TO CLARIFY PROCEDURES FOR LIBRARY BOARD MEMBER APPOINTMENT AND TERMS, AND THE PROCEDURE FOR EXCLUSION FROM THE LIBRARY

Library Director Margaret Barnes presented the staff report. The issue before the City Council was whether the City Council should amend the Tigard Municipal Code sections 2.36.030, 2.36.040, 7.100.10 and 7.100.40 to clarify procedures for Library Board member appointment and terms and the procedure for exclusion from the Tigard Public Library. Details of the proposed amendments are contained in the staff report, which is on file with the City Recorder.

Motion by Councilor Scheckla, seconded by Councilor Patton, to adopt Ordinance No. 01-13.

ORDINANCE NO. 01-13 – AN ORDINANCE AMENDING CHAPTERS 2.36.030, 2.36.040, 7.100.10 AND 7.100.40, OF THE TIGARD MUNICIPAL CODE TO CLARIFY PROCEDURES FOR LIBRARY BOARD MEMBER APPOINTMENT AND TERMS, AND THE PROCEDURE FOR EXCLUSION FROM THE TIGARD PUBLIC LIBRARY.

The motion was approved by a unanimous of City Council present:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	Yes

13. DISCUSS PROVISIONS OF THE TIGARD MUNICIPAL CODE CONCERNING THE BUILDING APPEALS BOARD

Building Official Gary Lampella reviewed the staff report. The question before the City Council was whether Tigard Municipal Code Chapter 2.09, Building Appeals Board, should be revised or retained in its current format. After discussion with the City Council, the consensus was to reduce the number of board members from 13 to 7 or 8. Mr. Lampella will return to the City Council at a future meeting date with an ordinance to adjust the number of board members.

14. COUNCIL LIAISON REPORTS: None.

15. NON AGENDA ITEMS: None.

16. EXECUTIVE SESSION: No Executive Session was held.

17. ADJOURNMENT: 9:40 p.m.

Catherine Wheatley, City Recorder

Attest:

Mayor, City of Tigard

Date: _____

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MINUTES
TIGARD CITY COUNCIL MEETING
September 18, 2001

1. WORKSHOP MEETING

- 1.1 Mayor Griffith called the meeting to order at 6:32 p.m.
- 1.2 Roll Call: Mayor Griffith; Councilors Dirksen, Moore, Patton and Scheckla.
- 1.3 Pledge of Allegiance
- 1.4 Council Communications & Liaison Reports: None
- 1.5 Call to Council and Staff for Non Agenda Items
City Manager referred to the Administrative Items for Review Agenda, which is on file with the City Recorder. These items were reviewed in more detail at the end of the meeting.

2. DISCUSSION OF SIDEWALK MAINTENANCE ON MAJOR COLLECTORS

City Manager Monahan referred to a request from the Summerfield Civic Association to delay the discussion of this item until November 20, 2001. Consensus of the City Council was to reset this agenda item as requested.

(Agenda Item No. 4 was discussed at this point in the meeting.)

3. BUDGET COMMITTEE MEETING

- Budget Committee Chair George Burgess called the meeting to order at 7:09 p.m.
- Roll Call: Chair Burgess; Committee Members Benner, Dirksen, Griffith Moore, Moszer, Patton, Scheckla, Sherwood, and Zuffrea.

3.1 Update on Financial Issues

- Cook Park Project/OECDD Loan
Finance Director Prosser updated the Budget Committee on the Cook Park loan in the amount of \$2.29 million. This item is also one of the matters to be review in the Supplemental Budget Hearing (see Item 3.2). Additional details on this loan are on file with the City Recorder.
- Photo Radar
Several positions had been designated in the Budget for the anticipated enforcement and processing relative to implementation of Photo Radar. Mr. Prosser reported that the cost:benefit ratio of the program does not appear to work for the City of Tigard. This program was tabled.

- Telecommunication Franchise (Qwest vs. The City of Portland)
Mr. Prosser briefly reviewed the court case with regard to the Qwest vs. the City of Portland franchise fee matter. This case could impact the City of Tigard. Qwest has advised the City of Tigard they will not be sending the franchise fees usually collected by the City until the outcome of the above-referenced case is known. The amount usually received from Qwest is approximately \$45,000 per year. Verizon advised that they will continue to pay franchise fees, but under protest. If Qwest is successful, Verizon will expect a refund. The total amount of franchise fees collected by the City of Tigard that could be affected is \$420,000 per year.

League of Oregon Cities has hired a financial expert to sort through the issues relating to the Qwest matter. It was noted that the City may need to start thinking about a reserve amount for franchise fees during the Budget process.

- Other Items
Mr. Prosser added that a position was added in the Finance Department. One of the responsibilities of this new position is to review all fees and charges. A draft summary of current fees and charges was distributed to departments for review.

3.2 Supplemental Budget Hearing

- Open public Hearing: Budget Committee Chair Burgess opened the public hearing.
- Present Staff Report: A detailed outline of the funds that were under review for this supplemental budget hearing is on file with the City Recorder. The supplemental budget focused on the Parks SDCs and Underground Utility Fees. Finance Director Prosser reviewed the information that had been previously distributed to the Budget Committee.
- Receive Public Testimony: There was no public testimony.
- Close Public Hearing: Budget Committee Chair Burgess closed the public hearing.
- Budget Committee Consideration: Motion by Budget Committee Member Benner, seconded by Budget Committee Member Moszer, to approve the Supplemental Budget for the City of Tigard and refer it to the City Council for a Public Hearing on October 9, 2001.

The motion passed by a unanimous vote of Budget Committee members present (10-0):

Chair Burgess and Committee Members Benner, Dirksen, Griffith Moore, Moszer, Patton, Scheckla, Sherwood, and Zuffrea all voted yes.

3.3 Status of Fiscal Year 2000-01 Year-End (preliminary results)

Finance Director Prosser reviewed the status of the FY 2000-01 year-end budget. Mr. Prosser distributed the unaudited ending fund balances for the current fiscal year and reviewed the information with the Budget Committee. He noted that most fund balances looked good.

- ❖ Budget Committee Meeting Adjourned: 7:33 p.m.
- ❖ Council Meeting Reconvened: 7:35 p.m.

Agenda Item No. 5 was discussed at this time.

4. UPDATE ON INSURANCE PROGRAM

Risk Manager Loreen Mills introduced this agenda item regarding updated information for the City's insurance program for property, casualty, and worker's compensation. Ms. Mills introduced Ron Graybeal, the City's Agent of Record. Mr. Graybeal summarized information on worker's compensation, property and liability insurance as well as introducing the proposal that it may be time for the City to consider becoming self-insured. A PowerPoint presentation was delivered to the City Council and a copy of the presentation is on file with the City Recorder.

The City participates in City County Insurance, which is a "pool," and not an insurance company. The process of how to determine whether self-insurance is the way to proceed reviewed. The process would include an actuarial study to determine the amount of funds to set aside to cover a percentage of potential claims. Another step would be to determine where certain additional insurance policies should be purchased to limit the aggregate losses. The funding mechanics, claims handling, and a traditional insurance comparison would also need to be reviewed. Self-insurance would not be proposed for employee medical benefits or workers' compensation. An actuarial study will be completed in December or January and recommendations will be brought to the City Council to determine whether a self-insurance program should be incorporated into the Budget process.

City Council meeting recessed at 7:06 p.m. and the Budget Committee convened at 7:09 p.m. (See Agenda Item No. 3.)

5. DISCUSSION OF STRATEGIES TO ADDRESS AFFORDABLE HOUSING

Community Development Director Jim Hendryx introduced this agenda item. Associate Planner Duane Roberts presented the staff report and referred to a PowerPoint presentation (both of which are on file with the City Recorder).

The issue before City Council was whether the City should grant Community Partners for Affordable Housing's (CPAH) request for a \$10,000 fee reduction.

Ms. Jill Sherman, representing CPAH, gave an overview of affordable housing financing. Associate Planner Duane Roberts reviewed the staff recommendation as contained in the Council Agenda Item Summary.

City Manager Monahan noted that the rent-free office space that the City donates to CPAH will be made available through this year only. In response to a question from Councilor Scheckla, Associate Planner Roberts noted that the City Attorney's advice was to avoid waivers of fees; however, a potential option is that the City would give money from the General Fund to CPAH for fees.

Discussion followed on what types of affordable housing is offered in other communities in the area. It was noted that it was difficult to find projects that qualify for affordable housing funding.

Council members discussed social service funding and the Council goal with regard to affordable housing. There was also some discussion about setting funding that was targeted for affordable housing opportunities rather than have these requests be combined with social service funding requests during the budget process. City Manager Monahan said that a Council decision should include setting standards for funding criteria for affordable housing. He informed the Council that Hawthorne Villa (a low-income housing center) will likely ask for a tax abatement from the City of Tigard. He advised that the City Council should decide the level of contribution for affordable housing from the City's budget. In addition, Mr. Monahan noted that in a few years the City will need to determine whether the Tigard taxpayers should be asked for a five-year operating levy in order to keep the General Fund at a level to maintain current programs.

After discussion on the staff recommendation to provide \$8,000 in fee relief to CPAH, the Council consensus was that a budget amendment transferring \$8,000 from the General Fund to CPAH should be placed on an upcoming agenda for Council consideration. In addition, Council indicated that affordable housing contributions (whether it should be separated from social services when considering the budget) should be discussed during the next goal-setting session.

6. COUNCIL LIAISON REPORTS: None.

7. NON-AGENDA ITEMS: None.

> City Manager Review Administrative Items:

- Mayor Griffith reported the success of a “walk” that occurred on Saturday, September 15, as a memorial resulting from the tragic events of September 11. This candlelight walk started at Main Street and ended at City Hall. The event was well organized and well attended. There was also an event in memory of victims and to show patriotic support last Friday at Cook Park.
- An agenda was distributed to the City Council for the September 25, 2001, City Council meeting. Cable television coverage for the Council meeting will begin at 6:30 that evening. Tigard’s 40th “Birthday” was on September 11, 2001, but because of tragic events in New York the celebration planned for that day was postponed to September 25, 2001.
- Information was distributed to the City Council in its mail distributed last week regarding the League of Oregon Cities Conference, November 9-11, 2001, in Eugene, Oregon.
- City Manager Monahan noted there was interest expressed by the downtown merchants to conduct the holiday tree lighting on Main Street at Liberty Park. After brief discussion, the consensus of City Council was to support the holiday tree lighting at Liberty Park rather than hosting the tree lighting at the City Hall.
- Community Development Director Hendryx distributed a memorandum dated September 17, 2001, from Albert Shields to Bill Monahan regarding the house that is to be moved to Cornelius but is now located on SW North Dakota Street. A copy of this memorandum is on file with the City Recorder. This structure should be removed from its current location this upcoming weekend. Staff is working with Emmert Construction so that situations such as this are avoided or are taken care of more quickly in the future.
- Councilor Dirksen reported on a recent Water Consortium meeting. He advised that Commissioner Sten was recommending moving forward with a regional water provider. Future proposals discussed included a water maintenance program and a potential water conservation rebate to customers.

8. EXECUTIVE SESSION: Canceled.

9. ADJOURNMENT: 9:09 p.m.

Catherine Wheatley, City Recorder

Attest:

Mayor, City of Tigard

Date: _____

**MEMORANDUM
CITY OF TIGARD, OREGON**

TO: City Council
FROM: Bill Monahan
DATE: November 6, 2001
SUBJECT: COUNCIL CALENDAR, November 2001 - January 2002

Regularly scheduled Council meetings are marked with an asterisk (*). If generally OK, we can proceed and make specific adjustments in the Monthly Council Calendars.

November

12	Mon	Veteran's Day – City Offices Closed
* 13	Tues	Council Meeting - 6:30 p.m. Study Meeting - Business Meeting
* 20	Tues	Council Workshop Meeting - 6:30 p.m.
22 & 23	Thurs/Fri	Thanksgiving Holiday – City Offices Closed
* 27	Tues	Council Meeting - 6:30 p.m. Study Meeting - Business Meeting

December

* 11	Tues	Council Meeting - 6:30 p.m. Study Meeting - Business Meeting
* 18	Tues	Council Meeting - 6:30 p.m. Study Meeting - Business Meeting
25	Tues	Christmas Day – City Offices Closed

January

1	Tues	New Year's Day – City Offices Closed
* 8	Tues	Council Meeting - 6:30 p.m. Study Meeting - Business Meeting
* 15	Tues	Council Workshop Meeting - 6:30 p.m.
21	Mon	Martin Luther King, Jr. Day – City Offices Closed
* 22	Tues	Council Meeting - 6:30 p.m. Study Meeting - Business Meeting

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11/20/01 - Workshop	11/27/01 - Business TV Ron/Gus(BU)-Greeter	12/11/01 - Business TV -Greeter
Due: 11/6/01 @ Noon	Due: 11/13/01 @ Noon	Due: 11/27/01 @ Noon
Workshop Topics	Study Session	Study Session
Sidewalk Maintenance - Howard - 30 min	TMC Update - LCRB - Tom & Terry - 20 min	City Manager Review Format - Bill - 20 min
Web Administrator Introduction - Update on City's Web Site - Paul - 20 min	Exec Session - Real Estate Transaction	
Bull Mountain Annexation Report Update - Jim 25 min		
TSP Adoption Work Session - Julia - 45 min		
Tri-Met Action Update - Julia - 10 min	Consent Agenda	Consent Agenda
Sponsorship Agreements for 4th of July, Balloon Festival, & Broadway Rose- Cathy - 20 min	Initiate Dartmouth @ 69th Ave Street Vacation - Matt - Res	Receive & File: TMC Update Report - Cathy
	Budget Amendment - Lighting Retrofit - Craig	R&F: Report on Review of TMC Updates - Cathy
		Approve Internet Policy - Bill
	Business Meeting	Business Meeting
	Bull Mountain Annexation Update - Jim - 30 min	VA - Nathan Leamy
	TMC Update - Local Improvement Districts - Greg - ORD - 10 min	Council Liaison Reports - National League of Cities Conference - 10 min
	TMC Update - Abandoned, Found, Seized & Stolen Property - ORD - Ron & Tim - 10 min	TMC Update - Police Dept 2.30 - ORD - Ron - 10 min
	TMC Update - Truck/Trailer Parking Restrictions - ORD & RES - Ron - 10 min	TMC Update - Building Code - 14.04 Jim & Gary - 10 min
		Tigard Central Business District - Tree Lighting Update - Jim H. - 10 min
		New Library Construction Comm Bond Measure - Margaret - PH - Res - 30 min or possibly on 12/18...
		Preliminary Evaluation of Wall St L.I.D. - Gus - 15 min
I:/adm/greer/tentatv ag/tentative.xls		

12/18/01 - Business TV (taped/replay)	1/8/02 - Business TV -Greeter	1/15/02 - Workshop
Due: 12/4/01 @ Noon (Ed - Greeter)	Due: 12/24/01 @ Noon	Due: 12/31/01 @ Noon
Study Session	Study Session	Workshop Topics
City Attorney Review - 20 min		Council Goal Setting (SI) - Placeholder (separate date may be selected)
Consent Agenda	Consent Agenda	
Planning Commission Appointments - RES - Susan		
Business Meeting	Business Meeting	
Planning Commission Appointee Introductions - Susan - 5 min	VA - Nathan Leamy	
Regional Drinking Water Agency Draft Proposal- Ed - 20 min	State of the City (SI) - Mayor - 20 min	
TMC Update - Public Assemblies (Balloon Festival)-ORD & RES - Ron - 10 min	Executive Summary (SI) - Bill - 20 min	
New Library Construction Comm Bond Measure - Margaret - PH - Res - 30 min	Vision 2001 Report - Loreen - 15 min	
Wall St L.I.D. - Approval of Preliminary Engineering Study - Gus - 5 min	Library Update - Margaret -15 min	
	Street Vacation PH - Dartmouth Street @ 69th Avenue - Matt - 10 min - PH ORD	
		SI = standing item
I:/adm/greer/tentatv ag/tentative.xls		I:/adm/greer/tentatv ag/tentative.xls

AGENDA ITEM # _____
FOR AGENDA OF November 13, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Appointment of Bret A. Johnson as a Tree Board Member and Brooks Gaston as a Tree Board Alternate.

PREPARED BY: Susan Koepping DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Appointing a member and an alternate to the Tree Board.

STAFF RECOMMENDATION

Adopt the attached resolution appointing Bret A. Johnson as a Tree Board member, and appointing Brooks Gaston as a Tree Board alternate.

INFORMATION SUMMARY

Attached is a resolution that, if approved would appoint Bret A. Johnson as a member of the Tree Board to complete the term initiated by John Butruille. That term expires on April 30, 2003. This resolution also appoints Brooks Gaston as an alternate to the Tree Board for a term that expires June 30, 2003. These appointments will fill the seven-member Board and provide 1 alternate.

OTHER ALTERNATIVES CONSIDERED

Delay the appointments

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Goal: City will maximize the effectiveness of the volunteer spirit to accomplish the greatest good for our community.

ATTACHMENT LIST

1. Resolution appointing Bret A. Johnson as a Tree Board member and Brooks Gaston as Tree Board alternate.
2. Citizen Interest Applications of Bret A. Johnson and Brooks Gaston

FISCAL NOTES

none

CITY OF TIGARD, OREGON

RESOLUTION NO. 01-_____

A RESOLUTION OF THE TIGARD CITY COUNCIL APPOINTING BRET A. JOHNSON AS A TREE BOARD MEMBER, AND APPOINTING BROOKS GASTON AS A TREE BOARD ALTERNATE.

WHEREAS, an opening exists on the Tree Board with the resignation of John Butruille, and

WHEREAS, Bret A. Johnson has expressed an interest in serving on the Tree Board, and

WHEREAS, Brooks Gaston has expressed an interest in serving on the Tree Board, and

WHEREAS, the Mayor's Appointments Advisory Committee conducted Tree Board interviews on October 16th and 23rd, 2001

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: Bret A. Johnson is appointed as a Tree Board member to complete the term of John Butruille. That term expires April 30, 2003.

SECTION 2: Brooks Gaston is appointed to a two-year term as a Tree Board alternate. The term of the alternate expires on June 30, 2003.

SECTION 3: This resolution is effective immediately upon passage.

PASSED: This _____ day of _____ 2001.

Mayor - City of Tigard

ATTEST:

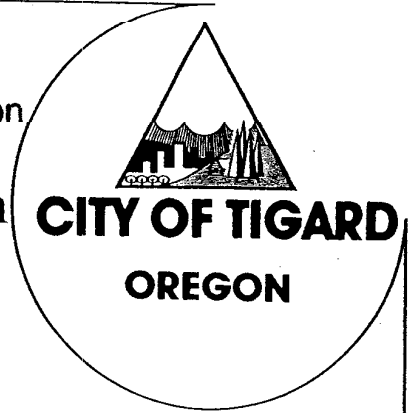
City Recorder - City of Tigard

RESOLUTION NO. 01-__

RECEIVED C.O.T.

SEP 05 2001

Administration



Citizen Committee Interest Application

Date: September 3, 2001

Name: M/Bret Arthur Johnson

E-mail: _____

Address (Res.): 12235 SW Bull Mtn Rd.

Res. Phone: 503-639-1802

Address (Bus.): SAME

Bus. Phone: 503-639-1802

Length of Residence in Tigard: 42 years

Suggested by: Beverly Froude

Where did you live previously: Lifetime resident of Tigard

Educational Background: Tigard High School Class of '77
Zyrs Lewis & Clark College

Occupational Status and Background: Gardener.

Previously managed Family's Fruit & nut orchards

How long have you been employed with this firm: Self-employed for about 20 yrs

Previous Community Activity: Town Tigard House Committee

Organizations and Offices: _____

Other Information (General Remarks): _____

Boards or Committees Interested in: The Tree Board

Any other pertinent information you want to share? Thank you for considering me for this post.

Please return this form to Susan Koepping, City of Tigard, 13125 SW Hall Blvd., Tigard, OR 97223

13125 SW Hall Blvd., Tigard, OR 97223 (503) 639-4171 TDD (503) 684-2772

Post-it Fax Note 7672

To: Brooks Gaston	From: Susan Koepping
Company: Waluga Jr High	Company: City of Tigard
Location:	Location:
Fax # (503) 534-2276	Fax # 503 684 7217
Telephone #	Telephone # 503 941 71 x 460
Original	Original
Disposition:	Disposition:
<input type="checkbox"/> Destroy	<input type="checkbox"/> Destroy
<input type="checkbox"/> Retain	<input type="checkbox"/> Retain
<input type="checkbox"/> Call for pickup	<input type="checkbox"/> Call for pickup

Hi Brooks,

I'm glad you are interested in the Tree Board. Please let me know if you have any questions.

RECEIVED C.O.T. RECEIVED C.O.T.

MAR 05 2001

Administration

Administration

Citizen Committee Interest Application



Date: March 2, 2001

A Name: Brooks Gaston Email: gastonsbank@aol.com

Address (Res.): 10272 SW Meadow St. Tigard 97223 Res. Phone: 968-6011

Address (Bus.): 4700 SW Jean; Lk. Oswego Bus. Phone: 534-2343

Length of Residence in Tigard: Six months Suggested by:

Where did you live previously: McAllen, TX

Educational Background: B.A. St. Olaf College
Teachers Certificate - University of Texas, Pan American

Occupational Status and Background: I have been a teacher of English in middle school since 1996. I currently teach at Waluga Junior High.

How long have you been employed with this firm: 6 months

Previous Community Activity: HOMBRES (Christian men's service org);
sponsor: Brown Middle School Outdoors Club; organized community cleanups in La Villa, TX.

Organizations and Offices:

Other Information (General Remarks): I would be happy to be a participant with the tree board in any way.

Boards or Committees Interested in: Tigard Tree Board

Any other pertinent information you want to share? I'm also interested in starting a "Friends of the Tigard Trails" organization.

Please return this form to Susan Koepping, City of Tigard, 13125 SW Hall Blvd., Tigard, OR 97223

13125 SW Hall Blvd., Tigard, OR 97223 (503) 639-4171 TDD (503) 684-2772

C:\ADMIN\FORMS\CITIZEN INTEREST.FOX

arrived after applic. period ended

AGENDA ITEM # _____
FOR AGENDA OF _____

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Nominations to the Washington County Cooperative Library Services Board

PREPARED BY: William A. Monahan DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should the City Council forward the nomination of Margaret Barnes, primary representative, and Anne Braun, alternate representative, to the Washington County Cooperative Library Services Board?

STAFF RECOMMENDATION

Staff recommends that the City Council nominate Margaret Barnes as the city's primary representative and Anne Braun as the city's alternative representative to the Washington County Cooperative Library Services Board.

INFORMATION SUMMARY

Annually, the city has an opportunity to nominate its primary and alternate representatives to the Washington County Cooperative Library Services Board. In the past, the Library Director has served as primary representative with the City Manager serving as alternate. The City Manager has recommended that a member of the Library Board serve as the alternate representative. Anne Braun has agreed to serve in this capacity.

OTHER ALTERNATIVES CONSIDERED

Appoint someone from the City Council or the public-at-large to serve as the alternate.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

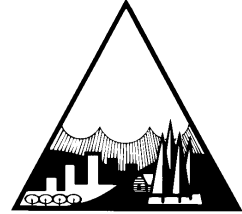
ATTACHMENT LIST

None needed.

FISCAL NOTES

None needed.

MEMORANDUM
CITY OF TIGARD, OREGON



TO: Honorable Mayor and City Council Members

FROM: Bill Monahan

DATE: November 5, 2001

SUBJECT: Washington County Cooperative Library Services Appointments

Annually, the city has an opportunity to appoint both a primary and an alternate representative to the Washington County Cooperative Library Services Board (WCCLS). For the past several years I have served as the alternate with our Library Director serving as primary.

Last year council approved my recommendation that Margaret Barnes serve as primary representative while I served as alternate. It is my recommendation that the alternate position be filled by a member of the Library Board. As a result, Margaret has polled the Board and been advised that Anne Braun has agreed to serve as the alternate to the Board.

With council approval, I will forward Tigard's nominations for CLAB representatives to the Washington County Board of Commissioners as follows:

Primary Representative Margaret Barnes
Alternate Representative Anne Braun

AGENDA ITEM # _____
FOR AGENDA OF Nov. 13, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Bid Award for the Construction of the SW Gaarde Street Pressure Reducing Valve Vault (CIP No.W01-101)

PREPARED BY: Dennis Koellermeier DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Shall the Local Contract review Board authorize the award of bid to the lowest responsible and qualified bidder for the construction of the Gaarde Street Pressure Reducing Valve Vault.

STAFF RECOMMENDATION

Staff recommends that the Local Contract Review Board award the bid for the SW Gaarde Street Pressure Reducing Valve Vault construction project to the lowest responsible and qualified bidder, W.G. Moe & Sons in the amount of \$128,750.

INFORMATION SUMMARY

Staff advertised for bid on September 25 and 27, 2001 in the Daily Journal of Commerce and September 27, 2001 in the Tigard Times for the construction of SW Gaarde Street Pressure Reducing Valve Vault. Bids were opened and read on October 18, 2001, at 2:00PM. There were ten bids received ranging from \$128,750.00 to \$205,362.58 and are listed below:

WG Moe & Sons	128,750.00	P.C.R., Inc.	139,936.80
SunQuest Construction	129,146.72	Rotschy, Inc.	140,763.25
LLC	134,448.15	Kerr Contractors	153,836.00
Daneal Construction	137,101.50	Oregon Excavation, Inc.	158,020.50
Clackamas Construction	139,929.00	Schneider Equipment	205,362.58

After review and investigation, W.G. Moe & Son's bid is considered to be responsive and the firm is qualified to perform the work.

OTHER ALTERNATIVES CONSIDERED

1. Reject all bids.
2. Award the bid to the next lowest responsible and qualified bidder.
3. Give staff further direction

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Action plan #3 of strategy #3 under the "Water and Stormwater" goal states that Tigard should develop ways to control access to water which would not allow growth to outgrow water supply. This project supports that action plan by developing the water infrastructure to allow improved delivery of water to those areas of Tigard most affected by growth.

ATTACHMENT LIST

N/A

FISCAL NOTES

There is \$150,000 budgeted for this project in the Water CIP fund.

AGENDA ITEM # _____
FOR AGENDA OF November 13, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Consider an Ordinance Amending Chapter 5.12 of the Tigard Municipal Code

PREPARED BY: Liz Newton/Craig Prosser DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Consider an ordinance to amend Chapter 5.12 of the Tigard Municipal Code.

STAFF RECOMMENDATION

Approve the proposed ordinance.

INFORMATION SUMMARY

Chapter 5.12 of the Tigard Municipal Code is the ordinance that sets forth how the city regulates and administers the cable system. The ordinance was originally adopted in 1979 and, other than reformatting, has not been changed since.

Staff reviewed the ordinance and also had Sarah Hackett, Senior Communications Analyst with the Metropolitan Area Communications Commission (MACC) review the ordinance. The attached memo summarizes the proposed amendments. Essentially the amendments would delete details regarding cable franchise selection and administration and would add some definitions.

OTHER ALTERNATIVES CONSIDERED

Suggest additional amendments to the proposed ordinance.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

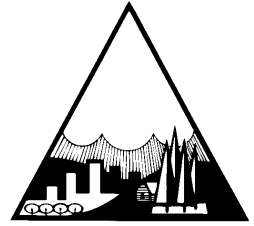
ATTACHMENT LIST

1. Memorandum from Liz Newton and Craig Prosser dated October 30, 2001.
2. Proposed Ordinance and Exhibit "A".

FISCAL NOTES

N/A

MEMORANDUM



TO: Honorable Mayor and Council

FROM: Liz Newton, Assistant to the City Manager
Craig Prosser, Finance Director

DATE: October 31, 2001

RE: Revisions to Chapter 5.12 of the Tigard Municipal Code

Chapter 5.12 of the Tigard Municipal Code sets forth how the city regulates and administers the cable system. The ordinance has not been revised since its' original adoption in 1979.

We reviewed the ordinance and also asked Sarah Hackett, Senior Communications Analyst with the Metropolitan Area Communications Commission (MACC) review the ordinance.

Here is a summary of the changes shown in Exhibit A to the proposed ordinance:

- Section 5.12.010 and throughout the chapter replace “communications” with “system.”
- Section 5.12.020 Definitions –
 - Delete “communications” from the term cable communications system.
 - Expand the definitions of cable system and franchise
 - Add definitions for “franchise” and “PEG access.”
- Section 5.12.040 Selection of Franchise
 - Delete sections that are too specific regarding information required in as request for proposals. The specific requirements do not need to be in the ordinance and in fact if the city wanted to change requirements, the ordinance would have to be amended.
- Section 5.12.050 Administration of Cable System Ordinance and Franchise
 - Delete specific powers that can be enumerated in a contract or agreement with a provider.
 - Add a section that grants council the authority to take any action it deems necessary to ensure quality service.
- Section 5.12.060 Violations, Penalties and Remedies
 - (a) change the title from “violations, and penalties” to “operation without a franchise” to reflect the violation the penalties address.

CITY OF TIGARD, OREGON

ORDINANCE NO. 01-

AN ORDINANCE AMENDING CHAPTER 5.12 OF THE TIGARD MUNICIPAL CODE PERTAINING TO REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM

WHEREAS, the Tigard City Council has determined that certain sections of the Tigard Municipal Code (TMC) are to be amended so that the TMC is internally consistent and reflects the intent of the Council; and

WHEREAS, Chapter 5.12 Cable Communications has not been reviewed or revised since its' adoption in 1979; and

WHEREAS, Chapter 5.12 needs revision to add definitions and clarify the city council's authority and powers; and

WHEREAS, Chapter 5.12 contains unnecessary language related to the selection of franchise and administration of the cable system ordinance and franchise;

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Tigard Municipal Code Chapter 5.12 shall be amended as shown attached as Exhibit "A"

SECTION 2: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2001.

Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2001.

James E. Griffith, Mayor

Approved as to form:

City Attorney

Date

TIGARD MUNICIPAL CODE

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[Inserted Text]

Chapter 5.12 CABLE ~~COMMUNICATIONS~~ SYSTEM

Sections:

- 5.12.010 Short title.
- 5.12.020 Definitions.
- 5.12.030 Declaration of powers.
- 5.12.040 Selection of franchise.
- 5.12.050 Administration of cable communications ordinance and franchise.
- 5.12.060 Violation, penalties and remedies.

5.12.010 Short title.

This chapter shall be known and referred to as the Tigard cable ~~communications~~ system ordinance. (Ord. 79-84 §1, 1979).

5.12.020 Definitions.

(a) Cable ~~Communications~~ System. As used in this chapter, "cable ~~communications~~ system" or "system" means a system of antennas, cables, amplifiers, closed transmission paths and associated signal generation, reception, and control equipment, ~~towers,~~ microwave links, cablecasting studios, and any other conductor, converters, equipment or facilities designed and constructed for the purpose of producing, receiving, amplifying, storing, processing, or distributing audio, video, digital or other forms of electronic or electrical signals. It does not include a facility that does not use public right of way or public land or facilities to serve subscribers.

(b) Franchise. As used in this chapter, the term "franchise" means the non-exclusive revocable privilege conferred upon a person, firm or corporation (~~franchisee~~) by the city to construct or operate a cable ~~communications~~ system under the terms and provisions of this chapter, whether in the form of a franchise, license, or similar agreement. (Ord. 79-84 §2, 1979).

(c) Franchisee. Any individual, natural person, sole proprietorship, partnership, association, or corporation or any other form of entity or organization granted a franchise.

(d) PEG Access. Noncommercial use of the system for use by agencies, institutions, organizations, groups, and individuals in the community to acquire, create, receive, and distribute services and signals including but not limited to public, education, and government use.

5.12.030 Declaration of powers.

The city, by and through its council, recognizes, declares and establishes its authority to regulate the development and operation of a cable ~~communications~~ system (hereinafter "system") for the city and to exercise all powers necessary for that purpose, including, but not limited to, the ~~foregoing:~~ following:

(1) To grant by resolution nonexclusive, revocable franchises, licenses, contracts or similar agreements for the development and operation of a system or systems;

(2) To contract, jointly agree or otherwise provide with other local and regional governments, counties or special districts for the development, construction, operation, and regulation of a system or systems or franchises therefore, notwithstanding the fact that the system extends beyond the boundaries of the city;

(3) To create local improvement districts for the development or extension of a system, and to provide for the undergrounding of the system as a local improvement, as that term is now or hereafter defined by Oregon Revised Statutes, Chapter 223, or city ordinances;

(4) To purchase, hire, construct, own, maintain, and operate or lease a system and to acquire property necessary for any such purpose;

TIGARD MUNICIPAL CODE

~~[Deleted Text]~~

[Inserted Text]

(5) To administer and regulate ~~and supervise all facets of~~ a system, including but not limited to:

- (A) Consumer complaints,
- (B) Disputes among the city, franchisees, and consumers,
- (C) Fair employment practices,
- (D) ~~The~~ dDevelopment, management and control of ~~a~~ government access channels as well as development of other access channels, or contracting for this service.
- (E) Rates ~~regulation~~ and review of finances for rate adjustments, as allowed by federal and state laws and rules,
- (F) Construction timetables and standards,
- (G) Modernization of technical aspects,
- (H) Ensuring adherence to federal and state regulations,
- (I) Franchise transfer and transfer ~~of~~ or change of control of ownership,
- (J) Franchise renewal ~~and/or franchise~~ revocation,
- (K) Enforcement of buy-back, lease back sale or other options to purchase, ~~provisions,~~ and
- (L) Receivership and foreclosure procedures. (Ord. 79-84 §3, 1979).

5.12.040 Selection of franchise.

(a) In the event that the council finds it in the best interests of the city to grant a franchise for a system, ~~the procedures set forth in this chapter shall be followed. On motion of the council,~~ the city ~~administrator~~ manager or his designate shall be directed to prepare a request for proposal (hereafter referred to as an "RFP"), ~~containing at least the following:~~

~~(1) Information and instructions relating to the preparation and filing of bid proposals;~~

~~(2) Requirements regarding the development, operation and regulation of a system, including but not limited to the following:~~

~~(A) The length, renewal and transfer or assignment of the franchise, including foreclosure and receivership provisions,~~

~~(B) A description of the franchise territory and the extension of service,~~

~~(C) The system design, including channel capacity, channel uses, access programming facilities, specialized services, point to point service, two-way provisions, subscriber privacy, interconnection of systems, and underground and above ground installation requirements,~~

~~(D) Technical performance standards,~~

~~(E) Records and reporting,~~

~~(F) Indemnification, insurance, and liability for damages, and~~

~~(G) Provision of an option for the city to acquire the system upon revocation or expiration of the franchise;~~

TIGARD MUNICIPAL CODE

[Deleted Text]

[Inserted Text]

~~_____ (3) _____ Criteria to be used in evaluating applicant proposals.~~

~~_____ (b) _____ The council, by resolution, may:~~

~~_____ (1) _____ Approve the RFP as proposed, or modify or otherwise make amendments thereto as it deems necessary;~~

~~_____ (2) _____ Authorize the city administrator to seek bids for a system pursuant to the RFP.~~

~~_____ (c) _____ The city council may employ the services of a technical consultant, as necessary, to assist in the analysis of any matter relative to the RFP and to the evaluation of any bid.~~

(b) The city ~~council~~ manager or its designate shall prepare an evaluation of the ~~bids~~ proposals received, and shall submit the evaluation to the council together with any recommendations. The evaluation shall be made available to the public for inspection.

(c) The council may award a franchise to an applicant only after a public hearing on the application and ~~bid~~ proposal, notice of which shall be published in a local newspaper of general circulation in the city at least ten days prior to the date of the hearing. All applicants shall be notified by mail of the public hearing; provided, however, that no defect in the notice or failure to notify shall invalidate the franchise awarded.

~~(d)~~ (d) No franchise or award thereof shall be deemed final until passage of a resolution containing the terms and conditions thereof. The franchisee shall bear the costs of all publications and notices given in connection with the award of the franchise. (Ord. 79-84 §4, 1979).

**5.12.050 Administration of cable
communications system
ordinance and franchise.**

The city council shall have the power(s) to carry out any or all of the following functions:

~~_____ (1) _____ Employ the service of a technical consultant, to assist in the analysis of any matter relative to any franchise under this ordinance;~~

~~_____ (2) _____ Act on applications for franchises;~~

~~_____ (3) _____ Act on matters which might constitute grounds for revocation or termination of a franchise pursuant to its terms;~~

~~_____ (4) _____ Resolve disagreements among franchisees and public and private users of the system;~~

~~_____ (5) _____ Act as hearing board for all requests for rate settings or adjustments;~~

~~_____ (6) _____ Coordinate the franchisee's consultant services to facilitate government, educational, community group and individual use of the public channels;~~

~~_____ (7) _____ Determine general policy relating to the service provided subscribers and the operation and use of access channels, with a view to maximizing the diversity of programs and services to subscribers. The use of access channels shall be allocated on a first come, first served basis, subject to limitations on monopolization of system time, or prime time(s);~~

~~_____ (8) _____ Encourage use of access channels among the widest range of institutions, groups and individuals within the city;~~

~~_____ (9) _____ Submit an annual report which contains, at a minimum, the total number of hours of utilization of access channels, a review of any plans submitted during the year by a franchisee for development of new services, and hourly subtotals for various programming categories. The annual report shall include the following~~

TIGARD MUNICIPAL CODE

[Deleted Text]

[Inserted Text]

programming categories:

~~_____ (A) _____ Local educational uses including library, public and private schools,~~

~~_____ (B) _____ Public access for local programming under public control,~~

~~_____ (C) _____ Local government access (such as fire, police, burglar alarms, and public announcements),~~

~~_____ (D) _____ Channel time use for lease for pay television,~~

~~_____ (E) _____ Channel time use for lease for business or municipal uses, including telemetry of information, and~~

~~_____ (F) _____ Information retrieval and professional communication;~~

~~_____ (10) _____ Act in intergovernmental matters relating to systems, cooperate with other systems, and supervise interconnection of systems;~~

~~_____ (11) _____ Submit budget request(s) to the budget committee for requested appropriation of funds to carry out its functions;~~

~~(12)~~ (1) Review all franchisee records required by the franchise and, in the city council's discretion, require the preparation and filing of additional information; ~~additional to that required by the franchise;~~

~~(13)~~ (2) Conduct evaluations of the system at least every three years with the franchisee, and pursuant thereto, this chapter or the franchise agreement;

~~(14)~~ (3) Pass regulations and procedures necessary to enforce franchises and to clarify terms thereof. (Ord. 79-84 §5, 1979).

(4) Take any other actions it deems

necessary to ensure provision of quality cable services to the citizens of Tigard.

5.12.060 Violation, penalties and remedies.

(a) ~~Violation and Penalties~~ Operation Without Franchise. Any person ~~firm~~ or corporation, whether as principal, agent, employee or otherwise, violating or causing the violation of any provision of this chapter or performing any of the acts and/or functions itemized under subsection (b) of Section 5.12.020, which defines a cable ~~communications~~ system, without having been awarded a franchise to perform said acts or functions pursuant to the terms of this chapter shall be deemed to have committed a class A misdemeanor. Each violation occurring on a separate day is considered a separate violation of this chapter.

~~(e)~~ (b) Injunctive Relief. Upon authorization by the city council, the city attorney may institute a suit in equity in the Circuit Court of the state or other appropriate court to enjoin the continued violation of any provision of this chapter.

~~(b)~~ (c) Cumulative Remedies. The rights, remedies and penalties provided in this section are cumulative and not mutually exclusive and are in addition to any other rights, remedies and penalties available to the city under any other ordinance or law. (Ord. 79-84 §7, 1979).■

AGENDA ITEM # _____
FOR AGENDA OF November 13, 2001

CITY OF TIGARD, OREGON COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Introduction of Tree Board member and alternate

PREPARED BY: Susan Koepping DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Appointments to the Tree Board were made as part of the Consent Agenda of this meeting. The new Tree Board member and alternate will be acknowledged by the Council.

STAFF RECOMMENDATION

Introduce the new Tree Board member, Bret Johnson, and Brooks Gaston, the alternate.

INFORMATION SUMMARY

Bret Johnson will complete the remainder of John Butruille's term on the Tree Board. Brooks Gaston will be the alternate to the Tree Board.

Tree Board members and alternates serve as volunteers using their experience, knowledge and community insight for the benefit of the Tigard community.

OTHER ALTERNATIVES CONSIDERED

If action is delayed on the appointments, delay action on the introductions.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Goal: City will maximize the effectiveness of the volunteer spirit to accomplish the greatest good for our community.

FISCAL NOTES

None

AGENDA ITEM # _____
FOR AGENDA OF November 13, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE A RESOLUTION AUTHORIZING A LOAN FROM THE SPECIAL PUBLIC WORKS FUND BY ENTERING INTO A LOAN CONTRACT WITH THE OREGON ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT.

PREPARED BY: Craig Prosser DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should the City Council authorize the City to take out a loan from the Oregon Economic and Community Development Department (OECDD) to finance the Cook Park improvement project over a 10-year period?

STAFF RECOMMENDATION

Approve the loan.

INFORMATION SUMMARY

On June 26, 2001, the City Council authorized staff to apply for a loan from the Oregon Economic and Community Development Department to help pay for the Cook park project. On August 2, 2001, the OECDD authorized the loan. The City must now sign a Financial Assistance Award Contract and a Community Facility Loan Agreement with OECDD to finalize this loan. This resolution authorizes the Finance Director to sign these documents and any related documents and certifications on behalf of the City.

The total loan amount is \$2,290,248. This loan will be repaid over the next 10 years from Parks SDC revenues. In the event that the Parks SDC revenues are insufficient to repay the loan, the City agrees to use General Fund dollars, including property taxes received from the City's permanent property tax rate to make debt service payments. This "full faith and credit" pledge provides a high level of security which results in a low interest rate for this loan.

OECDD obtains funds to make the loan to Tigard and other communities by selling tax-exempt bonds. OECDD expects the bond sale that will fund this loan to occur in January. The loan agreement allows the City to obtain funds prior to the bond sale by signing a promissory note. If the City chooses to request this "pre-funding", the amount pre-funded will carry an interest rate of 2.58% until the final interest rate on the loan is set following the January bond sale.

Under OECDD regulations, the City had to publish notice of the Council meeting at which this resolution was to be considered. That notice was published on October 26, 2001. At the meeting, the Council will have to conduct a public hearing to allow interested parties to testify on the proposed resolution.

OTHER ALTERNATIVES CONSIDERED

Do not approve the loan agreement. In that case, the City will need to pay for Cook Park improvements as funds become available over time.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

The Cook Park project supports several of the Vision Task Force Goals, including:

1. Community Character and Quality of Life – Community Events – Goal #1
Community Aesthetics – Goal #1
2. Growth and Growth management – Goal #1
3. Urban and Public Services – Parks & Recreation Goals

This project also supports the Council Goals of implementing the City Park Master Plan and providing recreational opportunities to Tigard citizens.

ATTACHMENT LIST

Resolution with attachments

FISCAL NOTES

The City will receive \$2,290,248 from this loan. The interim interest rate is 2.58%. The final interest rate will be assigned in January after the State sells bonds to fund the loan. The final interest rate is expected to be less than 4.5%.

CITY OF TIGARD, OREGON

RESOLUTION NO. 01-_____

A RESOLUTION AUTHORIZING A LOAN FROM THE SPECIAL PUBLIC WORKS FUND BY ENTERING INTO A LOAN CONTRACT WITH THE OREGON ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT.

WHEREAS, The City of Tigard is a “municipality” within the meaning of Oregon Revised Statutes 285B.410(1), and

WHEREAS, Oregon Revised Statutes 285B.410 through 285B.479 (the “Act”) authorize any municipality to file an application with the Oregon Economic and Community Development Department (“the Department”) to obtain financial assistance from the Special Public Works Fund, and

WHEREAS, The City has filed an application with the Department to obtain financial assistance for an “infrastructure project” within the meaning of the Act, and

WHEREAS, The Department has approved the City’s application for financial assistance from the Special Public Works Fund pursuant to the Act, and

WHEREAS, The City is required, as a prerequisite to the receipt of financial assistance from the Department, to enter into a Financial Assistance Award Contract and a Loan Agreement with the Department in substantially the form attached hereto as Exhibits “A” and “B”, and

WHEREAS, The Cook Park Project described in Exhibit “A” to the Loan Agreement (the “Project”) is an “infrastructure project” within the meaning of the Act which is needed by and is in the public interest of the City, and

WHEREAS, Notice relating to the City’s consideration of the adoption of this Resolution was published at least once in a newspaper of general circulation within the City of Tigard. Such notice was published at least 14 days in advance of the adoption of this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1. The City Council authorizes the Finance Director to execute the Financial Assistance Award Contract, Loan Agreement, the Promissory Note attached as Exhibit “F” to the Loan Agreement (the “Financing Documents”) and such other documents as may be required to obtain financial assistance including a loan from the Department on the condition that the principal amount of the loan from the Department to the City of Tigard is not in excess of \$2,290,248 and the interest rate is a percent deemed reasonable by the Finance Director and in the best interest of the City of Tigard. The proceeds of the loan from the Department shall be applied solely to the “Costs of the Project” as such term is defined in the Loan Agreement.

RESOLUTION NO. 01-__

SECTION 2. Amounts payable by the City of Tigard shall be payable from the sources described in Section 2.07 of the Loan Agreement and the Oregon Revised Statutes Section 285B.443(2) which include:

- a. Any sources of funds that are legally available to the City,
- b. The revenues, if any, of the Project, including special assessment revenues, if any, and
- c. The City's General Fund including the general revenues of the City, other funds which may be available for such purpose and a pledge of the City's taxing power within the restrictions of Article XI, Section 11 and 11b of the Constitution of the State of Oregon. The obligation of the City to make payments pursuant to the Loan Agreement is a full faith and credit obligation of the City that is not subject to annual appropriation.

SECTION 3. The Finance Director is hereby authorized to enter into any agreements and to execute any documents or certificates which may be required to obtain financial assistance from the Department for the Project pursuant to the Financial Assistance Award Contract and the Loan Agreement.

SECTION 4. The City covenants not to take any action or omit to take any action if the taking or omission would cause interest paid by the City pursuant to the Loan Agreement not to qualify for the exclusion from gross income provided by Section 103(a) of the Internal Revenue Code of 1986, as amended. The Finance Director of the City of Tigard may enter into covenants on behalf of the City to protect the tax-exempt status of the interest paid by the City pursuant to the Loan Agreement and may execute any Tax Certificate, Internal Revenue Service forms or other documents as shall be required by the Department or their bond counsel to protect the tax-exempt status of such interest.

SECTION 5. The City may reimburse expenditures for the Project with amounts received from the Department pursuant to the Financing Documents. Additionally, the City understands that the Department may fund or reimburse itself for the funding of amounts paid to the City pursuant to the Financing Documents with the proceeds of bonds issued by the State of Oregon pursuant to the Act. This Resolution shall constitute "official intent" within the meaning of Section 1.150-2 of the Income Tax Regulations promulgated by the United States Department of the Treasury with respect to the funding or the reimbursement for the funding of the costs of the Project with the proceeds of the City's loan pursuant to the Financing Documents and with the proceeds of any bonds issued by the State of Oregon pursuant to the Act.

SECTION 6. This resolution is effective immediately upon passage.

RESOLUTION NO. 01-__

PASSED: This _____ day of _____ 2001.

Mayor - City of Tigard

ATTEST:

City Recorder - City of Tigard

STATE OF OREGON
SPECIAL PUBLIC WORKS FUND - COMMUNITY FACILITIES
FINANCIAL ASSISTANCE AWARD CONTRACT

This Contract is made and entered into as of _____, ____ by and between the STATE OF OREGON, ACTING BY AND THROUGH ITS ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT ("State") and the City of Tigard ("Borrower"). The reference number of this Contract is K02001.

RECITALS

WHEREAS, the award of financial assistance which is the subject of this Contract is authorized by ORS 285B.410 through 285B.482 (the "Act"); and

WHEREAS, a reasonable estimate of the Costs of the Project, as hereinafter defined, is Two Million, Five Hundred and Forty Thousand, Two Hundred and Forty-eight Dollars (\$2,540,248); and

WHEREAS, the Borrower is authorized to enter into this contract with the State under ORS 285B.437(1); and

WHEREAS, the State has reviewed the Borrower's application and determined the Project, as hereinafter defined, meets the eligibility requirements and merits funding; and

WHEREAS, the State is willing to provide a Loan of \$2,290,248 to the Borrower on the terms and conditions of this Contract.

NOW, THEREFORE, the parties agree as follows:

SECTION 1
CERTAIN DEFINITIONS

As used in this Contract, the following terms shall have the following meanings:

"Act" shall mean ORS 285B.410 through 285B.482, as amended.

"Award" shall mean written notification from the State offering a Loan to the Borrower.

"Contract" means this contract between the State and the Borrower, including any exhibits, schedules and attachments thereto, as amended from time to time.

"Costs of the Project" shall mean all eligible costs of acquiring and constructing the Project, including any financing costs properly allocable to the Project, as set out in the approved Project Budget in Exhibit B to the Loan Agreement.

"Default" shall mean an event which with notice or lapse of time or both would become an Event of Default as set out in Section 7 hereof.

“Event of Default” shall mean any of the events described in Sections 7(A) through 7(E) of this Contract.

“Loan” shall have the meaning ascribed thereto in Section 2(A) of this Contract.

“Loan Agreement” shall mean that certain loan agreement, substantially in the form of Exhibit 1 attached hereto and by this reference made a part hereof, entered into between the State and the Borrower, as such agreement may from time to time be amended and/or restated.

“Loan Closing Date” shall have the meaning ascribed thereto in the Loan Agreement.

“Loan Closing Deadline” shall have the meaning ascribed thereto in the Loan Agreement.”

“Maturity Schedule” shall mean the scheduled payments of principal and interest required to be made by the Borrower pursuant to the schedule set forth in Exhibit G, attached hereto and by this reference incorporated herein.

“Note” shall mean that certain promissory note, substantially in the form of Exhibit F to the Loan Agreement, executed by the Borrower in favor of the State, as it may from time to time be amended, extended, renewed or restated.

“Project” shall have the meaning ascribed thereto in the Loan Agreement and described in Exhibit A of the Loan Agreement.

“Project Completion Date” shall mean the date on which the Borrower has in fact completed the construction of the Project, as described in Section 3.02(d) of the Loan Agreement.

“Special Public Works Fund” shall mean the Special Public Works Fund created by ORS 285B.455(1).

“State Bonds” shall mean the bonds or other obligations, if any, issued by the State of Oregon, acting by and through its State Treasurer, to fund, refund or refinance the Loan.

SECTION 2 FINANCIAL AWARD

A. Amount of Loan

Subject to the terms and conditions of this Contract and the Loan Agreement, the State agrees to loan and disburse to Borrower, and Borrower agrees to borrow and accept from State, a loan in the principal amount of Two Million, Two Hundred and Ninety Thousand, Two Hundred and Forty-eight Dollars (\$2,290,248) as further described herein and in the Loan Agreement (the “Loan”). The interest rate on the Loan shall be based on the interest rates of the serial maturities of the State Bonds.

B. Availability of Funds

The Loan set out in Section 2(A) above is subject to the availability of moneys in the Special Public Works Fund.

C. Change in the Act

The State shall not be obligated to provide the Loan if, on or prior to the time the Borrower satisfies all conditions for disbursement of the Loan, there has been a change in the Act so that the Project is no longer eligible for the financial assistance authorized by this Contract.

D. Drawdowns

The Borrower must submit drawdown requests for the Loan on a State-approved cash request form.

E. Participation Rate

The Borrower shall finance no more than ninety and sixteen percent (90.16%) of the Costs of the Project from the Loan ("Participation Rate"), and the Borrower agrees that notwithstanding any other provision of this Contract, the aggregate drawdowns on the Loan shall not exceed the Participation Rate times the Costs of the Project.

**SECTION 3
USE OF AWARD**

A. Eligible Activities

The use of the Loan is expressly limited to the Project activities described in Exhibit A of the Loan Agreement. The use of these funds is also expressly subject to the Special Conditions of Award set out in Exhibit D in the Loan Agreement, attached hereto and by this reference incorporated herein.

B. Ineligible Activities

No part of the Loan shall be used for:

1. Administrative costs;
2. Costs incurred prior to award of funds to the Borrower except in the case of preliminary and final engineering, surveying, architectural reports and other support activities necessary to the construction of the Project;
3. Assistance to facilities which are or will be privately owned;
4. Purchase of equipment, such as motor vehicles, not directly appurtenant to the Project;
5. Purchase of off-site property for project-related purposes such as wetland mitigation or other uses not directly related to the Project;
6. Operation and maintenance expenses;

**SECTION 4
[RESERVED]**

**SECTION 5
REPRESENTATIONS OF THE BORROWER**

The Borrower represents and warrants to the State that:

A. Costs of the Project

A reasonable estimate of the Costs of the Project is \$2, 540,248.

B. Binding Obligation

This Contract has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms.

C. Proceeding with Project; Issuance of State Bonds

The Borrower shall proceed expeditiously to complete the Project or any segment or phase of the Project in accordance with the plans and schedules approved by the State.

**SECTION 6
COVENANTS OF BORROWER**

The Borrower covenants as follows and understands that the requirements of the covenants may only be waived or amended by a written instrument executed by the State:

A. Compliance with Laws

The Borrower will comply with the requirements of all applicable laws, rules, regulations and orders of any governmental authority that relate to the construction of the Project and the operation of any utility system of which the Project is a component. In particular, but without limitation, the Borrower shall comply with:

1. State procurement regulations found in ORS Chapter 279.
2. State labor standards and wage rates found in ORS Chapter 279.
3. State municipal finance and audit regulations found in ORS Chapter 297.
4. State regulations regarding industrial accident protection found in ORS Chapter 656.
5. State conflict of interest requirements for public contracts.
6. State environmental laws or regulations enacted by agencies listed in Exhibit 2 hereto.
7. Oregon Administrative Rules, chapter 123, Division 43, as amended from time to time at the discretion of the State.
8. State municipal bonding requirements found in the Act and in ORS Chapters 280, 284, 286, 287 and 288.
9. Special Public Works Fund/Oregon Bond Bank Applicant's Handbook.

The State's performance under this Contract is conditioned upon the Borrower's compliance with the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, as amended from time to time, which are incorporated by reference herein.

B. Drawings

The Borrower shall obtain as-built drawings for all facilities constructed with the proceeds of the Loan. The Borrower shall obtain certification of completion per the as-built drawings from the Project engineer.

C. Operation and Maintenance of the Project

By the Project Completion Date, the Borrower will have a program, documented to the satisfaction of the State, for the on-going maintenance, operation and replacement, at Borrower's sole expense, of the public works service system, if any, of which the Project is a part. This program should include a plan for generating revenues sufficient to assure the operation, maintenance and replacement of the public works system, if any, of which the Project is a part during the service life of the Project.

D. Signs and Notifications

The Borrower shall display a sign, provided by the State, near the Project construction site stating that the Project is being funded by Lottery proceeds. The Borrower shall include the following statement, prominently placed, on all plans, reports, bid documents and advertisements relating to the Project:

"This Project was funded in part with a financial award from the Special Public Works Fund, funded by the Oregon State Lottery and administered by the State of Oregon, Economic and Community Development Department."

E. Insurance

Except as may be provided in the Special Conditions of Award, set out in Exhibit D of the Loan Agreement, attached hereto, in the event the Project, or any portion thereof, is destroyed and the Project is insured, any insurance proceeds shall be paid to the State and shall be applied to the outstanding balance of the Loan in such manner as the State in its sole discretion shall determine unless the State agrees in writing that the insurance proceeds shall be used to rebuild the Project.

F. Indemnity

To the extent permitted by Article XI, Section 10 of the Oregon Constitution, the Oregon Tort Claims Act, the Borrower's charter, and relevant Oregon statutes, the Borrower shall indemnify the State and its officers, employees and agents against any liability for damage to life or property arising from the actions of Borrower or its subcontractors, agents or employees.

G. Sales, Leases and Encumbrances

Borrower may not sell, lease, exchange, transfer or otherwise dispose of any property constituting a part of the Project or any interest therein unless (1) it is worn out, obsolete or, in the reasonable business judgement of the Borrower, no longer useful in the operation of the Project, and (2) such transaction will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Note pursuant to Section 103(a) of the Code as defined in the Loan Agreement. Except as may be provided in the Special Conditions of Award, proceeds of such sale, lease, exchange, transfer or other disposition which are not used to replace the property up to the amount of such proceeds times the Participation Rate shall be used to prepay the outstanding balance of the Loan.

H. Condemnation Proceeds

Except as may be provided in the Special Conditions of Award, set out in Exhibit D to the Loan Agreement, attached hereto, in the event the Project, or any portion thereof is condemned, any condemnation proceeds shall be used to prepay the outstanding balance of the Loan in accordance with Section 3.02(k) of the Loan Agreement.

I. Registered Engineer/ Licensed Architect

A registered professional engineer or a licensed architect in lieu of a registered professional engineer if use of a licensed architect has been approved by the Department will be responsible for design and construction of the Project. The Borrower will check with the Oregon Board of Engineering Examiners or the Oregon Board of Architect Examiners, as applicable, to verify an engineer's or architect's registration and complaint history prior to contracting with the engineer or architect.

**SECTION 7
DEFAULT**

If any of the following Events of Default occurs and is continuing, namely:

- A. The Borrower fails to proceed expeditiously with, or to complete, the Project or any segment or phase of the Project in accordance with the plans and schedules approved by the State; or
- B. Any representation with respect to current or historical information made to the State herein or in any other pertinent documents, certificates and reports relied upon by the State in gauging the progress of the Project, compliance with the requirements of the Act or compliance with the requirements of Section 103 and Sections 141 through 150 of the Code (as defined in the Loan Agreement) and performance of duties by the Borrower is untrue in any material respect; or
- C. The Borrower fails to perform or observe any of its covenants or agreements contained herein and fails to correct such deficiencies within thirty (30) days of notice from the State of such deficiencies, or such longer period as the State may authorize in its sole discretion; or
- D. If, within six (6) months from the date of this Contract, the Borrower has not entered into binding legal agreements with all private parties necessary to complete the Project; or
- E. The occurrence of an Event of Default under the Loan Agreement; thereupon, and in each such case, the State, may exercise any remedy described in Section 8.

**SECTION 8
REMEDIES**

Upon the occurrence of an Event of Default under this Contract, the State may pursue any or all of the remedies set forth herein or in the Loan Agreement or Note and any other remedies available at law or in equity. Such remedies include, but are not limited to, termination of the Contract and/or Loan Agreement, acceleration of the Loan, payment of costs associated with the defeasance of any State Bonds allocable to the Loan prior to the earliest optimal redemption date of such State Bonds, payment of amounts earned from the investment of the proceeds of the Loan, declaration of the Borrower's ineligibility to receive future lottery funded awards and the withholding pursuant to ORS 285B.449 of other State funds due the Borrower.

**SECTION 9
MISCELLANEOUS**

A. No Implied Waiver, Cumulative Remedies

B. Notices

If to the State: Manager, Northwest Team
Economic and Community Development Department
One World Trade Center, Suite 205
121 SW Salmon Street
Portland, OR 97204

C. Amendments

D. Execution in Counterparts

E. Severability

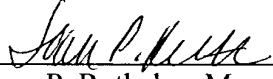
F. Merger

Program Development\temp3453

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed as of the last date set forth below the signatures of their respective representatives.

STATE OF OREGON
acting by and through its Economic and
Community Development Department

CITY OF TIGARD

By: 
Joan P. Rutledge, Manager
Northwest Team

By: _____
Craig Prosser
Finance Director

Date: 10/25/01

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/Michelle M. Teed (per email dated October 19, 2001)
Michelle M. Teed, Assistant Attorney General

Date: _____

Exhibit 1 – Loan Agreement
Exhibit 2 - Environmental and Natural Resource Agencies

Community Facility
Loan Agreement

BETWEEN

STATE OF OREGON

acting by and through its

ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT

AND

CITY OF TIGARD

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Exhibit B	Project Budget
Exhibit C	Description of the Loan
Exhibit D	Special Conditions
Exhibit E	Form of Requisition
Exhibit F	Form of Promissory Note
Exhibit G	Maturity Schedule

THIS LOAN AGREEMENT, is made and entered into as of XXXXXXXXXXXXXXXXXX, XXXX, by and between the STATE OF OREGON, ACTING BY AND THROUGH ITS ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT (the "State"), and the Borrower (as defined below). Capitalized terms not otherwise defined herein shall have the meanings assigned to them in Section 1.01 hereof.

WITNESSETH THAT:

WHEREAS, the State, in accordance with the Act, the Contract and the Bond Indenture, will provide funds in the Special Public Works Fund, and/or will issue State Bonds for the purpose of making loans to Municipalities, including the Borrower, to finance a portion of the cost of Community Facility projects within the meaning of ORS 285B.410 and 285B.422; and

WHEREAS, the Borrower has made timely application to the State for a Loan to finance all or a portion of the Costs of the Project, and the State has approved the Borrower's application for a Loan in the amount set forth in Exhibit C attached hereto and by this reference made a part hereof to finance a portion of the Costs of the Project; and

WHEREAS, the Borrower agrees under this Loan Agreement to make payments sufficient to pay when due the principal of, premium, if any, and interest on the Loan from the State in accordance with the Note, set forth on Exhibit F, the Maturity Schedule as set forth in Exhibit G and the terms herein; and

WHEREAS, the Borrower's obligations under this Loan Agreement and the other Loan Documents may be assigned to the Trustee under the Bond Indenture, to provide for the payment of and security for State Bonds issued by the State of Oregon;

NOW, THEREFORE, for and in consideration of the award of the Loan by the State, the Borrower agrees to perform its obligation under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein.

**ARTICLE I
DEFINITIONS**

SECTION 1.01. Definitions. The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the meanings assigned to them below:

"Act" means ORS 285B.410 through 285B.482, as amended.

"Authorized Officer" means, in the case of the Borrower, the persons whose names are set forth in Exhibit C hereto or such other person or persons authorized pursuant to a resolution, ordinance or other official action of the governing body of the Borrower to act as an authorized officer of the Borrower to perform any act or execute any document relating to the Loan or this Loan Agreement and whose name is furnished in writing to the State.

"Bond Closing Date" means the closing date of the sale of the State Bonds.

"Bond Counsel" means a law firm having knowledge and expertise in the field of municipal law and whose opinions are generally accepted by purchasers of municipal bonds.

“Bond Indenture” means the Indenture of Trust dated as of July 1, 1993, between the State, the Issuer, and the Trustee, pursuant to which the State Bonds are issued, and all amendments and supplements thereto adopted in accordance with the provisions thereof.

“Borrower” means the Municipality that is a party to this Loan Agreement and is described on Exhibit C hereto, and its successors and assigns.

“Business Day” means any day other than (a) a Saturday, Sunday or legal holiday or a day on which banking institutions in Salem, Oregon or in the city in which the principal office of the Trustee is located are closed, or (b) a day on which the New York Stock Exchange is closed.

“Code” means the Internal Revenue Code of 1986, as amended or supplemented from time to time, including any regulations promulgated thereunder and any administrative or judicial interpretations thereof.

“Completion Date” means the earlier of (a) the date on which all of the proceeds of the Loan, including any investment earnings derived from the investment of such proceeds, have been spent by Borrower, or (b) the second anniversary of the Loan Closing Date.

“Contract” means the Financial Assistance Award Contract between the State and the Borrower, dated as of XXXXXXXXXXXXXXXXXXXX, XXXX.

“Costs of the Project” means those costs that are (a) reasonable, necessary and directly related to an “infrastructure project” within the meaning of ORS 285B.410(2), including any financing costs properly allocable to the Project and preliminary costs such as engineering and architectural reports, studies, surveys, soil tests, designs, plans, working drawings and specifications that are necessary for the construction of the Project, and (b) permitted by generally accepted accounting principles to be costs of such Project. The term “Costs of the Project” does not include (i) costs in excess of one-hundred percent (100%) of the total cost of the Project, (ii) the purchase of equipment and other property not directly related to the Project, (iii) construction or repair of facilities owned or operated by private parties, (iv) costs incurred prior to the date of the Contract, except as provided in Section 3.02(a) hereof, (v) administrative expenses of the Borrower or (vi) costs that do not comply with the requirements of the General Certificate executed by the Borrower in connection with the closing of the Loan.

“Counsel” means an attorney at law or firm of attorneys at law (who may be, without limitation, of counsel to, or an employee of, the State, the Issuer, the Trustee or the Borrower) duly admitted to practice law before the highest court of any state.

“Event of Default” means any occurrence or event specified in Section 6.01 hereof.

“Issuer” means the State of Oregon acting by and through the State Treasurer of the State of Oregon.

“Loan” means the loan made by the State to the Borrower to finance or refinance a portion of the Costs of the Project pursuant to this Loan Agreement. The Loan may be funded by proceeds of State Bonds or from other amounts held in the Special Public Works Fund.

“Loan Agreement” means this loan agreement, including any exhibits, schedules or attachments hereto, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

“Loan Closing Date” means the date of the first disbursement of Loan proceeds in accordance with Section 2.01(c) hereof.

“Loan Closing Deadline” means the date by which all conditions precedent Loan Closing must be satisfied, as set out in Exhibit C attached hereto.

“Loan Documents” means the Loan Agreement, Note, and any agreements, instrument and certificates required to be executed and delivered hereunder.

“Loan Prepayment” means any amounts paid by the Borrower that are in excess of the amount required to be paid as a Loan Repayment.

“Loan Repayment” means the scheduled payments of principal and interest required to be made by the Borrower pursuant to the Note, including the Maturity Schedule.

“Loan Term” means the term of the Loan as set forth in the Note.

“Maturity Schedule” shall mean the scheduled payments of principal and interest required to be made by the Borrower pursuant to the schedule set forth in Exhibit G, attached hereto and by this reference incorporated herein.

“Municipality” means any entity described in ORS 285B.410(1) that has entered into a Contract with the State pursuant to which such entity will borrow money from the Special Public Works Fund.

“Note” means the promissory note of the Borrower substantially in the form of Exhibit F attached hereto and by this reference made a part hereof.

“Optional Loan Prepayment Date” means the Optional Loan Prepayment Date described in Exhibit C hereto.

“Project” means an “infrastructure project”, within the meaning of ORS 285B.410(2), of the Borrower described in Exhibit A attached hereto and by this reference made a part hereof, all or a portion of the of which is financed or refinanced by the State pursuant to this Loan Agreement.

“Project Completion Date” means the earlier of (a) the date on which all of the proceeds of the Loan, including any investment earnings derived from the investment of such proceeds, have been spent by Borrower; or (b) the date on which the Borrower completes construction of the Project.

“Revenues” means the revenues, including all legally available funding, identified in Section 2.07 hereof or in Exhibit D to Borrower’s Loan Agreement as a source of repayment for the Loan

“Special Public Works Fund” means the fund created by ORS 285B.455(1).

“State” means the State of Oregon acting by and through its Economic and Community Development Department.

“State Bonds” means the series of bonds, if any, authorized by the Bond Indenture and the Act, together with any refunding bonds authenticated and delivered pursuant to the Bond Indenture, in each case to finance or refinance the Project through the initial funding or refinancing of all the Loan.

“System” means the utility system or systems, if any, of the Borrower which includes the Project or components of the Project, as such system or systems may be modified or expanded from time to time. References in this Loan Agreement to the Borrower’s “System” shall be ignored to the extent that the Project is not a component of a utility system or systems.

“Trustee” means the Trustee pursuant to the Bond Indenture, or its successor or successors, and any other corporation which may at any time be substituted in its place as Trustee pursuant to the Bond Indenture.

“Underwriter” means the broker, dealer or municipal securities dealer acting as an underwriter in the primary offering of the State Bonds.

SECTION 1.02. General Rules.

Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, partnerships, agencies and districts. Words importing one gender shall include any other gender.

SECTION 1.03. Loan Agreement Not Assigned to Trustee.

DURING ANY PERIOD OF TIME IN WHICH THIS LOAN AGREEMENT HAS NOT BEEN ASSIGNED TO THE TRUSTEE, ALL REFERENCES IN THIS LOAN AGREEMENT TO “TRUSTEE,” “BOND INDENTURE,” “STATE BONDS,” “UNDERWRITER” AND “ISSUER” AND THE PROVISIONS OF THIS LOAN AGREEMENT PERTAINING THERETO SHALL BE VOID AND OF NO FORCE OR EFFECT EXCEPT FOR PURPOSES OF DETERMINING THE APPLICABLE REQUIREMENTS OF THE BOND INDENTURE OR DETERMINING ANY REQUIREMENTS OF THIS LOAN AGREEMENT THAT REFER TO PROVISIONS OF THE BOND INDENTURE.

**ARTICLE II
LOAN TO BORROWER**

SECTION 2.01. Loan Amount; Loan Terms; Disbursements; Use of Proceeds.

(a) Loan Amount. Subject to the terms and conditions hereof, in particular Sections 4.01 and 4.02 hereof, the State hereby agrees to loan and disburse to the Borrower, and the Borrower agrees to borrow and accept from the State, the Loan which, in the aggregate, shall not exceed the lesser of (i) the maximum principal amount of the Loan set out in Exhibit C hereof, or (ii) the Costs of the Project.

(b) Loan Terms. The terms of the Loan are set forth in Exhibit F hereto.

(c) Disbursements. Subject to Sections 4.01 and 4.02 hereof, the proceeds of the Loan shall be disbursed to the Borrower on an expense reimbursement or cost incurred basis upon receipt by the State of a requisition executed by the Borrower in substantially the form attached hereto as Exhibit E which is by this reference incorporated herein.

(d) Use of Proceeds. The Borrower shall use the proceeds of the Loan strictly in accordance with Section 3.02(a) hereof.

SECTION 2.02. Loan Payment.

(a) Payment. The Borrower hereby covenants and agrees to repay the Loan in accordance with the Contract (including but not limited to the terms of Exhibit D of the Loan Agreement thereto), the terms hereof and of the Note, including the Maturity Schedule. Borrower agrees to pay interest at the rate as adjusted after the sale of State Bonds, if any, as specified in the Note and other Loan Documents and acknowledges that this rate may be higher than the interest rate for direct loans through the Special Public Works Fund.

(b) Payments if Assignment. In the event that the Borrower receives written notification from the State, the Issuer or the Trustee that payments made pursuant to this Loan Agreement and Note have been assigned by the State to the Trustee under the Bond Indenture, all payments pursuant to this Loan Agreement and the Note shall be made directly to the Trustee for the account of the State pursuant to such assignment. The Borrower acknowledges that payment or defeasance of the State Bonds by the State or the Issuer does not constitute payment of the amounts due under this Loan Agreement or the Note.

SECTION 2.03. Unconditional Obligations.

The provisions of the Loan Agreement shall constitute a contract with the State and shall be enforced by the State or the Trustee as assignee pursuant to Section 5.01 hereof. Loan Repayments and all other payments required under the Loan Documents are payable solely from the sources of repayment described in Section 2.07 hereof. The Loan shall be a full faith and credit obligation of Borrower, and the obligation of the Borrower to make the Loan Repayments and all other payments required under the Loan Documents and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part to be performed or observed contained therein shall be absolute and unconditional. Payments hereunder and under any of the other Loan Documents shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, or any payments under this Loan Agreement or Note remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of considerations, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project or the System, commercial frustration of the purpose, any change in the laws of the United States of America or of the State of Oregon or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the State, the Issuer or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project, this Loan Agreement or the Bond Indenture or any rights of set off, recoupment, abatement or counterclaim that the Borrower might otherwise have against the State, the Issuer, the Trustee or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights. The Borrower shall not be obligated to make any payments required to be made by any other Municipality under any separate loan agreement or the Bond Indenture.

SECTION 2.04. Loan Agreement to Survive Bond Indenture and State Bonds.

The Borrower acknowledges that its duties, covenants, obligations and agreements hereunder shall survive the discharge of the Bond Indenture applicable to the State Bonds and payment of the principal of, redemption premium, if any, and interest on the State Bonds.

SECTION 2.05. Loan Prepayments.

(a) Mandatory Prepayment. The Borrower shall prepay the outstanding balance of the Loan upon the destruction of all or a substantial portion of the Project.

(b) Optional Prepayment on or after the Optional Loan Prepayment Date. Subject to the following terms and conditions, the Borrower may make Loan Prepayments upon not less than ninety (90) days prior written notice to the State and the Trustee; provided, however, that

(i) no Loan Prepayment shall be made prior to the Optional Loan Prepayment Date or, if later, the date on which the State Bonds are first subject to optional redemption;

(ii) each Loan Prepayment shall include (A) payment of the accrued interest on the amount prepaid and (B) the prepayment premium, if any, applicable to such Loan Prepayment as determined in accordance with Exhibit C hereof, and (C) the payment of any expenses of the Trustee, Counsel to the State or Bond Counsel associated with such prepayment; and

(iii) no Loan Prepayment shall be made without the prior written approval of the State.

(c) Optional Prepayment prior to the Optional Loan Prepayment Date. Loan Prepayments may be made prior to the Optional Loan Prepayment Date if (i) the Borrower obtains the prior written approval of the State, (ii) an opinion is obtained from the State's Bond Counsel to the effect that such a Loan Prepayment will not adversely affect the exclusion from gross income for federal and state income tax purposes of the interest on the State Bonds and the Loan, (iii) an escrow fund is established with the State or with an escrow agent acceptable to the State, and a deposit shall have been made to such escrow fund of cash and/or United States Treasury obligations which are not subject to redemption or prepayment and maturing as to principal and interest in such amounts and at such times as will, in the opinion of an independent certified public accountant delivered to the State, provide sufficient moneys, without reinvestment of any matured amounts, to make all payments of principal and interest on the Loan or portion to the Loan to be prepaid to and including the Optional Loan Prepayment Date together with any applicable prepayment premium, and (iv) the investment of amounts held in the escrow fund satisfies the requirements of Section 148 of the Code.

(d) General. Loan Prepayments shall be applied first to any expenses of the Trustee, then to accrued interest on the portion of the Loan prepaid, and finally to principal payment(s) on the Loan (including premium, if any). In the case of a Loan Prepayment that does not prepay all of the principal of the Loan, the State shall determine, in its sole discretion, the method by which such Loan Prepayment shall be applied to the outstanding principal payments. In the case of any Loan Prepayment prior to the Optional Loan Prepayment Date, Loan Prepayments shall be applied to the expenses of establishing an escrow fund and paying any expenses of the Counsel to the State, Bond Counsel and any independent certified public accountant required in connection with the actions required pursuant to paragraph (c) above, before such Loan Prepayments are applied to the payment of interest, principal or any redemption premium on the Loan.

SECTION 2.06. Unexpended Loan Proceeds. Any proceeds of the Loan held by the State on the Project Completion Date shall be applied, together with any interest earnings thereon, on the Optional Loan Prepayment Date specified in Exhibit C hereof:

First, to pay any arbitrage rebate due with respect to the Loan pursuant to Section 148(f) of the Code,

Second, to pay unpaid interest accrued to the Optional Loan Prepayment Date, and

Third, to prepay principal on the Loan and any prepayment premium specified on Exhibit C hereof associated with such prepayment.

The State shall determine, in its sole discretion, the method by which any payments on the Loan pursuant to this Section 2.06 shall be applied to the outstanding balance of the Loan. If any proceeds of the Loan remain after the payment of the entire outstanding principal balance of the Loan and the prepayment premium specified in Exhibit C, such amounts shall be the property of the State, and the Borrower shall have no claim to such amounts.

SECTION 2.07. Sources of Payment of Borrower's Obligations.

(a) The State and the Borrower agree that the amounts payable by the Borrower under this Loan Agreement and any of the other Loan Documents, including, without limitation, the amounts payable by the Borrower pursuant to Sections 2.02, 2.05, 2.08 and 6.04 hereof, are payable from the sources of repayment described in paragraph (b) of this Section 2.07; provided however that nothing herein shall be deemed to prevent the Borrower from paying the amounts payable under this Loan Agreement and the other Loan Documents from any other legally available source.

(b) The amounts payable by the Borrower under this Loan Agreement and the other Loan Documents are payable from the Revenues, including legally available funds in the Borrower's general fund, and other sources identified in the Special Conditions of Award set forth in Exhibit D to the Borrower's Loan Agreement. The pledges made by the Borrower in these Special Conditions of Award shall be valid and binding from the date of this Loan Agreement pursuant to ORS 288.594. The amounts so pledged and hereafter received by the Borrower shall immediately be subject to the lien of the pledge without physical delivery or further act except as may be stated in the Special Conditions of Award and shall be superior to all other claims and liens whatsoever to the fullest extent permitted by ORS 288.594.

The Borrower expressly acknowledges that if the Borrower defaults on payments due under this Loan Agreement or any of the other Loan Documents, the State of Oregon, pursuant to ORS 285B.449, may withhold all or a portion of any amounts otherwise due to the Borrower and apply said amounts to payments due under this Loan Agreement and the other Loan Documents to the fullest extent permitted by law; provided however that the provisions of the Loan Agreement and the Note are not to be construed in a way that would cause the obligations of the Borrower thereunder to constitute debt which violates Section 10, Article XI of the Oregon Constitution.

SECTION 2.08. Disclaimer of Warranties; Limitation of Liability; Indemnification.

The Borrower acknowledges and agrees that:

(a) neither the Issuer, the State nor the Trustee makes any warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the System or the Project or any portions thereof or any other warranty or representation with respect thereto;

(b) in no event shall the State, the Issuer or the Trustee or their respective agents be liable or responsible for any direct, indirect, incidental, special or consequential damages in connection with or arising out of this Loan Agreement, any of the other Loan Documents or the Project or the existence,

furnishing, functioning or use of the System or the Project or any item or products or services provided for in this Loan Agreement; and

(c) to the extent authorized by law, the Borrower shall indemnify, save and hold harmless the Issuer and the State against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Borrower, or its employees, agents or subcontractors pursuant to the terms of this Loan Agreement or any of the other Loan Documents, provided, however, that the provisions of this paragraph (c) are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

SECTION 3.01. Representations and Warranties of Borrower.

The Borrower represents and warrants for the benefit of the State and the holders of the State Bonds, if any, as follows:

(a) Organization and Authority.

(i) The Borrower is a Municipality as defined in the Act.

(ii) The Borrower has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain the Project and its System, other than licenses and permits relating to the Project which the Borrower expects to receive in the ordinary course of business, to carry on its activities relating thereto, to execute and deliver this Loan Agreement, to undertake and complete the Project, and to carry out and consummate all transactions contemplated by this Loan Agreement and the other Loan Documents.

(iii) The Project is a project which the Borrower may undertake pursuant to Oregon law and for which the Borrower is authorized by law to borrow money.

(iv) The proceedings of the Borrower's governing members and voters, if necessary, approving this Loan Agreement and the other Loan Documents and authorizing the execution and delivery of this Loan Agreement and other Loan Documents on behalf of the Borrower, and authorizing the Borrower to undertake and complete the Project have been duly and lawfully adopted in accordance with the laws of Oregon, and the actions of such proceedings were duly approved and published, if necessary, in accordance with applicable Oregon law, at a meeting or meetings which were duly called pursuant to necessary public notice and held in accordance with applicable Oregon law, and at which quorums were present and acting throughout.

(v) This Loan Agreement and all other Loan Documents required hereunder to be executed by Borrower have been duly authorized and executed and delivered by an Authorized Officer of the Borrower; and, assuming that the State has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered, this Loan Agreement and the Loan Documents required hereunder to be executed by the State, this Loan Agreement and other Loan Documents required hereunder to be executed by the Borrower constitute the legal, valid and binding

obligation of the Borrower in accordance with their terms, and the information contained in Exhibits A and B hereto and in Sections 3, 4, 9 and 11 of Exhibit C hereto is true and accurate in all respects.

(vi) Borrower's Contract and the Loan Agreement have been authorized by ORS 285B.437(1) and an ordinance of the Borrower which was adopted in accordance with ORS 285B.443(3) after proper publication at least fourteen (14) days prior notice published at least once in a newspaper of general circulation within the Borrower's jurisdiction and was adopted in accordance with applicable law and the Borrower's requirements for filing public notices and holding public meetings.

(b) Full Disclosure.

There is no fact that the Borrower has not disclosed to the State in writing on the Borrower's application for the Loan or otherwise that materially adversely affects the properties, activities, prospects or condition (financial or otherwise) of the Borrower, the Project or the Borrower's System, or the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents. Neither the Borrower's application for the Loan or the Borrower's representations in this Loan Agreement or any of the other Loan Documents contain any untrue statement of a material fact or omits any statement or information which is necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(c) Pending Litigation.

There are no proceedings pending, or, to the knowledge of the Borrower threatened, against or affecting the Borrower, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the Project, properties, activities, prospects or condition (financial or otherwise) of the Borrower or its System, or the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents, that have not been disclosed in writing to the State in the Borrower's application for the Loan or otherwise.

(d) Compliance with Existing Agreements, Etc.

The authorization, execution and delivery of this Loan Agreement and the other Loan Documents by the Borrower, the observation and performance by the Borrower of its duties, covenants, obligations and agreements thereunder and the consummation of the transactions provided for in this Loan Agreement and the other Loan Documents, the compliance by the Borrower with the provisions of this Loan Agreement and the other Loan Documents and the undertaking and completion of the Project will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or asset of the Borrower pursuant to, any existing ordinance or resolution, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument (other than any lien and charge of this Loan Agreement or any of the documents related hereto or to the Bond Indenture) to which the Borrower is a party or by which the Borrower, its System or any of its property or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Borrower was established or any laws, ordinances, resolutions, governmental rules, regulations or court orders to which the Borrower, its System or its properties or operations is subject.

(e) No Defaults.

No event has occurred and no condition exists that, upon authorization, execution and delivery of this Loan Agreement or any of the Loan Documents or receipt of the amount of the Loan, would constitute an

Event of Default hereunder. The Borrower is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party or by which it, its System or its property may be bound, which violation would materially adversely affect the Project, properties, activities, prospects or condition (financial or otherwise) of the Borrower or its System or the ability of the Borrower to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents.

(f) Governmental Consent.

The Borrower has obtained or will obtain all permits and approvals required to date by any governmental body or officer for the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents or for the undertaking or completion of the Project and the financing or refinancing thereof; and the Borrower has complied or will comply with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents or with the undertaking or completion of the Project and the financing or refinancing thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental body or officer that has not been obtained is required on the part of the Borrower as a condition to the authorization, execution and delivery of this Loan Agreement or any other Loan Document.

(g) Compliance with Law.

The Borrower:

(i) is in compliance with all laws, ordinances, and governmental rules and regulations to which it is subject, the failure to comply with which would materially adversely affect the ability of the Borrower to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of the Borrower or its System; and

(ii) has obtained or will obtain all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership of its property or for the conduct of its activities which, if not obtained, would materially adversely affect the ability of the Borrower to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of the Borrower or its System.

The State's performance under this Loan Agreement is conditioned upon the Borrower's compliance with the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which are incorporated by reference herein.

(h) The Project.

(i) The Project is feasible, and there will be adequate funds available to complete the Project and repay the Loan.

(ii) The Borrower has been provided with a copy of the rules adopted by the State under ORS 285B.419(1), and the Project is in compliance with such rules.

(iii) The Loan Term is not in excess of the useful life of the Project.

(iv) The Borrower has adequate financial resources to ensure the project's success.

(v) The Project will benefit a broad cross-section of the community.

(vi) The Project is situated in a city or county with a comprehensive land use plan that allows industrial and commercial development of a type and scale that is sufficient to produce revenues to repay the costs of the Project.

(vii) To the extent shown in the Special Conditions of Award, the Borrower has provided as part of the security for repayment of the Loan, provisions for payments from any owners of property specially benefited by the Project which are sufficient when considered with other security to assure repayment of the Loan and the portion of any State Bonds that fund or refinance the Loan.

(i) Costs of the Project.

The Borrower certifies that the Costs of the Project, as listed in Exhibits B and C hereto, (i) are a reasonable and accurate estimation and based upon an engineer's feasibility report and engineer's estimate stamped by a registered professional engineer, or an architect's feasibility report and architect's estimate stamped by a licensed architect, as applicable, a copy of which shall be promptly provided to the State upon request, (ii) exceeds the principal amount of the Loan shown on Exhibit C, and (iii) are not less than the sum of the proceeds of the Loan and the investment earnings projected to be derived from the investment of such proceeds. The Borrower further certifies that a registered professional engineer or licensed architect, in good standing in Oregon, will be responsible for design and construction of the Project.

(j) Continuing Representations.

The representations of the Borrower contained herein shall be true at the time of the Loan Closing Date and at all times during the term of this Loan Agreement.

SECTION 3.02. Particular Covenants of the Borrower.

(a) Use of Proceeds.

The Borrower will apply the proceeds of the Loan and interest earnings thereon (i) to finance all or a portion of the Costs of the Project; and (ii) where applicable and with prior written approval of the State, to reimburse the Borrower for a portion of the Costs of the Project, which portion was paid or incurred in anticipation of reimbursement by the State; provided however that all such reimbursements shall satisfy the requirements of Section 1.150-2 of the tax regulations promulgated under the Code. None of the proceeds of the Loan shall be used for ineligible activities as specified in Section 3.B. of the Contract.

(b) Source of Repayment.

The Loan shall be paid from such sources of repayment described in Section 2.07 hereof and the Special Conditions of Award set forth in Exhibit D to the Loan Agreement. Funds from such sources shall be applied to the punctual payment of the principal of and the interest on the Loan and all other amounts due under this Loan Agreement and the other Loan Documents according to their respective terms.

(c) Performance Under Loan Documents.

The Borrower covenants and agrees (i) to maintain the Project and its System in good repair and operating condition; (ii) to cooperate with the State in the observance and performance of the respective duties, covenants, obligations and agreements of the Borrower and the State under this Loan Agreement and the other Loan Documents; and (iii) to comply with the covenants described in this Loan Agreement and the other Loan Documents.

(d) Completion of Project and Provision of Moneys Therefore.

The Borrower covenants and agrees to provide the State with copies of all plans and specifications relating to the Project for review and approval by the State, but in any event no later than ten days prior to the date on which bids are advertised. The Borrower shall obtain as-built drawings for all facilities of the Project and obtain certification of completion per as-built drawings from the Project engineer or architect within ninety (90) days of the Project Completion Date. The Borrower shall supply a copy of such drawings and certification to the State upon request. The Borrower further covenants and agrees (i) to exercise its best efforts in accordance with prudent practice to complete the Project and to so accomplish such completion on or before the estimated Project Completion Date set forth in Exhibit C; (ii) to proceed expeditiously with, and complete, the Project in accordance with plans reviewed and approved by the State and (iii) to provide from its own fiscal resources all moneys, in excess of the total amount of Loan proceeds it receives pursuant to this Loan Agreement, required to complete the Project. For purposes of (ii) of the preceding sentence, if the State does not review the plans and specifications or suggests modifications thereto within thirty (30) days of the receipt by the State of the plans and specifications, they shall be deemed approved. The Borrower shall have a program, documented to the satisfaction of the State, for the on-going maintenance, operation and replacement, at its sole expense, of the Project. The program shall include a plan for generating revenues sufficient to assure the operation, maintenance and replacement of the Project during the useful life of the Project. Borrower shall provide such documentation to the State on or before the Project Completion Date.

(e) Disposition of Project or System.

Unless worn out, obsolete, or in the reasonable business judgement of the Borrower, no longer useful in the operation of the Project, the Borrower shall not sell, lease, exchange, abandon or otherwise dispose of all or substantially all or any substantial portion of the Project or its System or any other system which provides revenues for payment of amounts due under this Loan Agreement and the Loan Documents, except (i) if the State consents thereto in writing upon ninety (90) days' prior written notice to the State and (ii) either:

(i) The Borrower assigns this Loan Agreement and the other Loan Documents pursuant to Section 5.02 hereof,

(ii) The Borrower demonstrates to the satisfaction of the Trustee that such sale, lease, abandonment or other disposition will not adversely affect the rating of the State Bonds,

(iii) A rating of the Loan is obtained which (a) addresses such sale, lease, exchange, abandonment or other disposition, (b) is no lower than the rating of the State Bonds and (c) shall be in one of the three highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) by Moody's Investors Service or Fitch Investors Service, Inc., or

(iv) The State certifies to the Borrower that this Loan Agreement has not been assigned to the Trustee and provides a copy of such certification to the Trustee.

The State shall not consent to any such sale, lease, exchange, abandonment or other disposition unless the State shall have received an opinion of Bond Counsel to the effect that such sale, lease, exchange, abandonment or other disposition complies with the Act and will not adversely affect the

exclusion of interest on the Loan and on the State Bonds from gross income for purposes of federal income taxation under Section 103(a) of the Code (as defined in the Loan Agreement). Proceeds of any such transfer not used to replace property that is part of the Project shall be applied to the payment of the outstanding principal of and interest in the Loan as a Loan Prepayment subject to a prepayment premium, if any, as provided in Section 2.05 of this Agreement.

(f) Exclusion of Interest from Federal Gross Income and Compliance with Code.

(i) The Borrower covenants and agrees that it shall not take any action or omit to take any action which action or omission would result in the loss of the exclusion of the interest on the Loan from gross income for purposes of federal income taxation as that status is governed by Section 103(a) of the Code.

(ii) The Borrower shall not take any action or omit to take any action, which action or omission would cause the Loan to be a “private activity bond” within the meaning of Section 141(a) of the Code. Accordingly, unless the Borrower receives the prior written approval of the State, the Borrower shall neither (A) permit in excess of 10 percent of either (1) the proceeds of the Loan or (2) the Project financed or refinanced with the proceeds of the Loan, to be used directly or indirectly in any manner that would constitute “private business use” within the meaning of Section 141(b)(6) of the Code, nor (B) use directly or indirectly any of the proceeds of the Loan, to make or finance loans to persons other than governmental units as such term is used in Section 141(c) of the Code; provided further, that at least one half of the private business use permitted by clause (A) shall be neither disproportionate related business use, nor private business use not related to the government use of such proceeds of the Loan.

(iii) The Borrower shall not directly or indirectly use or permit the use of any of the “gross proceeds” (within the meaning of Section 148 of the Code) of the Loan or any other funds or take any action or omit to take any action, which use or action or omission would cause the Loan to be an “arbitrage bond” within the meaning of Section 148(a) of the Code.

(iv) The Borrower shall not use directly or indirectly the proceeds of the Loan in any manner that would constitute an “advance refunding” within the meaning of Section 149(d)(5) of the Code and shall not prepay the Loan or any part of the Loan without the prior written approval of the State and as provided in this Loan Agreement.

(v) The Borrower will not cause the Loan to be treated as a “federally guaranteed” obligation for purposes of Section 149(b) of the Code. For purposes of this paragraph, the Loan shall be treated as “federally guaranteed” if: (A) all or any portion of the principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality thereof, or (B) five percent (5%) or more of the proceeds of the Loan will be (1) used in making loans, the payment of principal or interest with respect to which is guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (2) invested directly or indirectly in federally insured deposits or accounts, and (C) none of the exceptions described in Section 149(b)(3) of the Code apply.

(vi) The Borrower agrees to assist the State, the Issuer and the Trustee to ensure that all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code are rebated to the United States of America. The Borrower agrees to provide all amounts necessary to

satisfy the requirements of Section 148(f) applicable to the Loan and, to pay to the State, the Issuer, or the Trustee such amounts as may be directed by the State, the Issuer, or the Trustee and at such times as the Borrower may be so directed to satisfy the requirements of Section 148(f) of the Code applicable to the portion of the proceeds of any State Bonds, including any proceeds or other amounts held in a reserve fund, applied to fund or refinance the Loan. The Borrower further agrees to reimburse the State, the Issuer or the Trustee for the portion of any expenses incurred by them that relate to the Loan and are necessary to satisfy the requirements of Section 148(f) of the Code.

(vii) In furtherance of the foregoing, the Borrower covenants that it will comply with the provisions of this Loan Agreement and with the provisions of any certificate executed by the Borrower relating to compliance with the provisions of Sections 103 and 141 through 150 of the Code executed by the Borrower, the State or the Issuer with respect to the Loan and will furnish to the State, the Issuer, or the Trustee in writing, upon reasonable request, information regarding investments and use of proceeds of the Loan and of any facilities financed or refinanced therewith.

(viii) The Borrower shall not enter into any management agreement for the operation of the Project that would cause the Loan to be or become a "private activity bond" within the meaning of Section 141(a) of the Code.

(ix) Notwithstanding anything to the contrary, so long as is necessary to maintain the exclusion from gross income for purposes of federal income taxation of interest on the Loan, the covenants contained in this subsection (f) shall survive the payment of the Loan and the State Bonds, and the interest thereon, including any payment pursuant to Section 2.05 of this Loan Agreement. The Borrower acknowledges that the Loan may be funded with the proceeds of the State Bonds and that failure to comply with the requirements of this subsection (f) could adversely affect any exclusion of the interest on the State Bonds from gross income for federal income tax purposes.

(x) Neither the Borrower nor any related party to the Borrower, within the meaning of Section 1.150-1(b) of the federal income tax regulations shall purchase State Bonds in an amount related to the amount of the Loan.

(g) Operation and Maintenance of Project and System

The Borrower covenants and agrees that it shall, in accordance with prudent ownership practice, (i) at all times operate the Community Facility Project so as to preserve the long term public benefits of the Project, (ii) maintain the Project and the System in good repair, working order and operating condition, including from time to time making all necessary and proper repairs, renewals, replacements, additions, betterments and improvements as may be required.

(h) Records; Accounts.

The Borrower shall keep accurate records and accounts for the revenues and funds that are the source of repayment of the Loan, including but not limited to the Revenues (the "Repayment Revenue Records"), separate and distinct from its other records and accounts (the "General Records"). Such Repayment Revenue Records shall be maintained in accordance with generally accepted accounting principles as established by the Government Accounting Standards Board as in effect from time to time and shall be audited annually by an independent accountant, which audit may be part of the annual audit of the General Records of the Borrower. Such Repayment Revenue Records and General Records shall be made available for inspection by the State, the Issuer or the Trustee at any reasonable time, and a copy of such annual audit(s) therefore,

including all written comments and recommendations of such accountant, shall be furnished to the State within 210 days of the close of the fiscal year being so audited. The Borrower's financial management system must conform with the generally accepted accounting principles for state and municipal corporations established by the National Committee on Governmental Accounting as in effect from time to time.

(i) Inspections; Information.

The Borrower shall permit the State and the Trustee and any party designated by any of such parties to examine, visit and inspect, at any and all reasonable time, the property, if any, constituting the Project, and to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the State and the Trustee may reasonably require in connection therewith. In addition, the Borrower shall provide the State with copies of loan documents or other financing documents and any official statements or other forms of offering prospectus relating to any other bonds, notes or other indebtedness of the Borrower that are issued after the Loan Closing Date and are secured by the Revenues.

(j) Insurance.

The Borrower shall maintain or cause to be maintained, insurance policies with responsible insurers or self insurance programs providing against risk of direct physical loss, damage or destruction of the Project and System, at least to the extent that similar insurance is usually carried by governmental units constructing, operating and maintaining similar facilities, including liability coverage, all to the extent available at reasonable cost. Nothing herein shall be deemed to preclude the Borrower from exerting against any party, other than the State, a defense which may be available to the Borrower, including without limitation a defense of immunity. In the event the Project or any portion thereof is destroyed, any insurance proceeds shall be paid to the State and shall be applied to the principal of and interest on the Loan, unless the State agrees in writing that the insurance proceeds shall be used to rebuild the Project. Any application of insurance proceeds to prepay the outstanding principal of the Loan shall not be subject to the prepayment premium, if any, as provided in Section 2.05(b).

(k) Condemnation.

In the event the Project or any portion thereof is condemned, any condemnation proceeds shall be used to prepay the outstanding balance on the Loan and shall not be subject to the prepayment premium, if any, as provided in Section 2.05(b).

(l) Notice of Material Adverse Change.

The Borrower shall promptly notify the State and the Trustee of any material adverse change in the activities, prospects or condition (financial or otherwise) of the Borrower, the Project, or the Borrower's System, or in the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents.

(m) Continuing Disclosure Requirements.

The Borrower shall provide the State with any information needed to comply with paragraph (b)(5) of the Securities and Exchange Commission Rule 15c2-12, 17 C.F.R. 240.15c2-12 (the "SEC Rule"), with respect to State Bonds. In addition, if the Borrower becomes an "obligated person" within the meaning of the SEC Rule or an "Obligated Borrower" (as such term is defined by the State or the State Treasurer of the State of Oregon) for the State Bonds, the Borrower shall, in addition to the requirements of paragraphs (h) and (i) of Section 3.02 of this Loan Agreement, provide the following to the State upon request:

(i) any and all financial information or operating data that may reasonably be requested by the State to comply with the SEC Rule, and

(ii) audited financial statements, when and if prepared and available, prepared in accordance with generally accepted accounting principles as established by the Government Accounting Standards Board as in effect from time to time; provided, however, that if audited financial statements are not available, unaudited financial statements will be provided with audited financial statements to follow when and if available.

(n) Financial Statements; Reports. The Borrower shall deliver to the State in form and details satisfactory to the State:

(i) As soon as reasonably possible and in any event within ninety (90) days after the close of each fiscal year of the Borrower, unaudited statements of revenues, expenditures, cash flows, and changes in retained earnings for each of the funds constituting the Revenues for such period, all in comparative form and all in reasonable detail and certified by the chief financial officer of the Borrower, subject to year-end audit adjustments.

(ii) Such other statement or statements or reports as to the Borrower as the State may reasonably request.

(o) Contract Covenants.

The Borrower covenants and agrees to comply with the terms of the Contract including the covenants of the Borrower in Section 6 of the Contract.

(p) Further Assurances.

The Borrower shall, at the request of the State, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Agreement.

ARTICLE IV CONDITIONS PRECEDENT

SECTION 4.01. Loan Closing

The State's obligations hereunder are subject to satisfaction of the following conditions precedent on or prior to the Loan Closing Deadline or such later date as the State may authorize in writing in State's sole and absolute discretion.

(a) the Borrower will cause to be duly executed and delivered to the State (regardless of whether the Loan Agreement is assigned to the Trustee) the following items, each in form and substance satisfactory to State, its Counsel and Bond Counsel:

(i) this Loan Agreement duly executed and delivered by an Authorized Officer of the Borrower;

(ii) the Note duly executed and delivered by an Authorized Officer of the Borrower;

(iii) the Contract duly executed and delivered by an Authorized Officer of the Borrower;

(iv) copy of the ordinance or resolution of the governing body of the Borrower authorizing the execution and delivery of this Loan Agreement, the other Loan Documents, and the Borrower's Contract, certified by an Authorized Officer of the Borrower;

(v) an opinion of the Borrower's Counsel, acceptable to the State, substantially in the form set forth in Section 63 (a) of the Bond Indenture (such opinion or portions of such opinion may be given by one or more Counsel); provided, however, that the State and its Counsel or Bond Counsel may permit variances in the form of such opinion, if such variances are not to the material detriment of the interests of the holders of the State Bonds;

(vi) the documents required by Section 63 (a), (c), (d) and (f) (if applicable) of the Bond Indenture (regardless of whether the Loan Agreement is assigned to the Trustee) to the State; and

(vii) such other certificates, documents, opinions and information as the State, the Issuer, the Trustee, the Bond Counsel, or the Underwriter may reasonably require.

(b) There is money available in the Special Public Works Fund for the Project;

provided, however, the State shall be under no obligation to make this Loan if there has been a change in the Act so that the Project is no longer eligible for financial assistance authorized by this Loan Agreement.

SECTION 4.02. Conditions to Disbursements.

Notwithstanding anything in this Loan Agreement or any of the Loan Documents to the contrary, the State shall have no obligation to make any disbursement to the Borrower hereunder if:

(a) an Event of Default has occurred and is continuing under this Loan Agreement or any of the Loan Documents or the Bond Indenture or event, omission or failure of a condition which would constitute an Event of Default as defined in this Loan Agreement or any of the Loan Documents or the Bond Indenture after notice or lapse of time or both;

(b) The representations and warranties of the Borrower made in this Loan Agreement are not true and correct on the date of disbursement with the same effect as if made on such date;

(c) State has not received (i) a requisition executed by the Borrower in substantially the form of Exhibit E attached hereto and by this reference made a part hereof or has not received (ii) such other written evidence of materials and labor furnished to or performed upon the Project, itemized receipts or invoices for the payment of the same, and releases, satisfactions and other signed statements and forms as the State may require as a condition for making disbursement of the Loan. The State may, at its option, from time to time, either reimburse the Borrower for construction costs paid or may make direct payment for construction costs to suppliers, subcontractors and others for sums due them in connection with construction of the Project. Nothing herein contained shall require the State to pay any amounts for labor or materials unless satisfied that such claims are reasonable and that such labor and materials were actually expended and used in the construction of the Project. The State, at its option, from time to time, may also require that the Borrower

have a contractor or subcontractor execute and/or deliver a surety bond or indemnification in form and substance acceptable to the State for the faithful performance of the construction contract or subcontract and payment of all liens and lienable expenses in connection therewith in a sum equal to the contract or subcontract price. Disbursements for the Costs of the Project shall be subject to a retainage at the rate of five percent (5%) which will be released upon satisfactory completion of the Project; or

(d) Money is not available in the Special Public Works Fund to fund the disbursement.

Further, the State shall have no obligation to make any disbursement to the Borrower if, on or before the time for disbursement, there has been a change in the Act so that the Project is no longer eligible for financial assistance authorized by this Loan Agreement.

ARTICLE V

ASSIGNMENT

SECTION 5.01. Assignment and Transfer by the State.

(a) The Borrower expressly acknowledges that, other than the right, title and interest of the State under Sections 2.08 and 6.04, all right, title and interest of the State in, to and under this Loan Agreement and the other Loan Documents either has been or may, at the sole discretion of the State, be assigned to the Trustee as security for the State Bonds as provided in the Bond Indenture, and that if any Event of Default shall occur and if this Loan Agreement and other Loan Documents have been assigned to the Trustee, the Trustee, pursuant to the Bond Indenture, shall be entitled to act hereunder in the place and stead of the State. The Borrower hereby consents to assignment of this Loan Agreement and the other Loan Documents to the Trustee for the State Bonds. The State acknowledges that the Borrower is not a party to the Bond Indenture and has no obligation to perform any of the State's covenants, agreements or obligations under the Bond Indenture or the State Bonds, and that the Borrower is only required to observe and perform its covenants, agreements and obligations under this Loan Agreement, the other Loan Documents, and the Contract and, if and when requested by the State, to cooperate with the State in order to enable the State to comply with the State's covenants, agreements or obligations under the Bond Indenture. This Loan Agreement and the other Loan Documents, including, without limitation, the right to receive payments required to be made by the Borrower hereunder and under the other Loan Documents and to compel or otherwise enforce observance and performance by the Borrower of its other duties, covenants, obligations and agreements hereunder and under the other Loan Documents, may be sold by the State to a third party or may be further transferred, assigned and reassigned in whole or in part to one or more assignees or subassignees by the Trustee at any time without the necessity of obtaining the consent of, but after giving prior written notice to, the Borrower.

In the event of the assignment of this Loan Agreement and the other Loan Documents to the Trustee, the State shall retain the right to compel or otherwise enforce observance and performance by the Borrower of its duties, covenants, obligations and agreements under Sections 3.01(f) and 3.02(d); provided, however, that in no event shall the State have the right to accelerate the outstanding balance payable pursuant to this Loan Agreement in connection with the enforcement of Sections 3.01(f) and 3.02(d).

(b) The Borrower hereby approves and consents to any assignment, sale or transfer of this Loan Agreement and the Loan Documents that the State deems to be necessary, including any assignment, sale or transfer in connection with any refunding of the State Bonds or the issuance of additional bonds under the Bond Indenture or otherwise in connection with any pooled loan program of the State.

SECTION 5.02. Assignment by Borrower.

This Loan Agreement and the other Loan Documents may not be assigned by the Borrower without the prior written consent of the State. The State may grant or withhold such consent in its sole discretion. In the event of an assignment of this Loan Agreement and the other Loan Documents by Borrower and assumption of the obligations hereunder, Borrower shall pay, or cause to be paid, to the State any fees or costs incurred by the State as the result of such assignment, including but not limited to, attorney fees of Bond Counsel or in-house Counsel.

ARTICLE VI
DEFAULTS AND REMEDIES

SECTION 6.01. Event of Default.

If any of the following events occurs, it is hereby defined as and declared to be and to constitute an “Event of Default:”

(a) Failure by the Borrower to pay, or cause to be paid, on December 1 of any year any Loan Repayment required to be paid hereunder on such due date, except if the Borrower is a county and such failure is the result of nonappropriation of funds; or

(b) Failure by the Borrower to make, or cause to be made, any required payments of principal, redemption premium, if any, and interest on any bonds, notes or other obligations of the Borrower for borrowed money (other than the Loan), after giving effect to the applicable grace period; or

(c) Any representation made by or on behalf of the Borrower contained in this Loan Agreement or any other Loan Document, or in any agreement, instrument, certificate or document furnished in compliance with or with reference to this Loan Agreement, any other Loan Document or the Loan or in connection with the State Bonds, is false or misleading in any material respect; or

(d) A petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Borrower, such petition shall be dismissed within twenty (20) calendar days after such filing, and such dismissal shall be final and not subject to appeal; or the Borrower shall become insolvent or bankrupt or make an assignment for the benefit of its creditors; or a custodian (including, without limitation, a receiver, liquidator or trustee of the Borrower or any of its property) shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) calendar days; or

(e) Failure of the Borrower’s governing body to appropriate sufficient funds to fully fund all of the Borrower’s obligations to make Loan Repayments hereunder for any future fiscal period, except if the Borrower is a county and such failure is the result of nonappropriation of funds; or

(f) The occurrence of any event of default under Section 7 of the Contract; or

(g) Failure by the Borrower to observe and perform any duty, covenant, obligation or agreement (including that described in subsection (h) below) on its part to be observed or performed under this Loan Agreement or any other Loan Documents, other than as referred to in subsections (a) through (f) of this Section, which failure shall continue for a period of thirty (30) calendar days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the State or the Trustee, unless the State or the Trustee shall agree in writing to an extension of such time prior to its expiration; provided,

however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the State or the Trustee may not unreasonably withhold their consent to an extension of such time up to one hundred twenty (120) days from the delivery of the written notice referred to above if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Event of Default is corrected; or

(h) The Borrower fails to proceed expeditiously with, or to complete, the Project or any segment or phase of the Project in accordance with the plans and schedules approved by the State.

SECTION 6.02. Notice of Default.

The Borrower shall give the State and the Trustee (if this Loan Agreement and the other Loan Documents have been assigned to the Trustee) prompt telephonic notice of the occurrence of any Event of Default referred to in Section 6.01(d) hereof, and of the occurrence of any other event or condition that constitutes an Event of Default at such time as any senior administrative or financial officer of the Borrower becomes aware of the existence thereof. Any telephone notice pursuant to this Section 6.02 shall be confirmed in writing as soon as practicable by the Borrower.

SECTION 6.03. Remedies on Default.

Whenever an Event of Default referred to in Section 6.01 hereof shall have occurred and be continuing, the State shall have the right to take, or to direct the Trustee to take, any action permitted or required pursuant to the Loan Agreement or any other Loan Document or the Bond Indenture and to take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any duty, covenant, obligation or agreement of the Borrower hereunder, including without limitation, (a) declaring all Loan Repayments and all other amounts due hereunder and under the other Loan Documents (including, but not limited to the state's cost of defeasance of the portion of any State Bonds allocable to the Loan, if all or a portion of the principal of and interest on the Bonds has been accelerated pursuant to the Bond Indenture) to be immediately due and payable, and upon notice to the Borrower the same shall become due and payable without further notice or demand, (b) appointment of a receiver of the System, (c) refusal to disburse any Loan proceeds, (d) barring the Borrower from applying for future Special Public Works Fund assistance, or (e) withholding amounts otherwise due to the Borrower to apply to the payment of amounts due under this Loan Agreement as provided in ORS 285B.449.

SECTION 6.04. Attorney's Fees

If any suit or action arising out of or related to this Loan Agreement is brought by any party, the prevailing party or parties shall be entitled to recover the costs and fees (including without limitation reasonable attorney's fees, the fees and costs of experts and consultants, copying, courier, and telecommunication costs, and deposition costs and all other costs of discovery) incurred by such party or parties in such suit or action, including without limitation any post-trial or appellate proceeding, or in the collection or enforcement of any judgment or award entered or made in such suit or action; provided, however, that recovery from the State under this section is subject the limitations of the Oregon Constitution, Article XI, section 7, and other relevant statutes.

SECTION 6.05. Application of Moneys.

Any moneys collected by the State or the Trustee pursuant to Section 6.03 hereof shall be applied (a) first, to pay any attorney's fees, Trustee's fees, or other fees and expenses owed by the Borrower hereunder, (b) second, to pay interest due and payable on the Loan, (c) third, to pay principal due and payable on the

Loan, and (d) fourth, to pay any other amounts due and payable under this Loan Agreement or any of the Loan Documents.

SECTION 6.06. No Remedy Exclusive; Waiver; Notice.

No remedy herein conferred upon or reserved to the State or the Trustee is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or any of the Loan Documents or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. To entitle the State or the Trustee to exercise any remedy reserved to it in this Article VI, it shall not be necessary to give any notice, other than such notice as may be required in this Article VI.

SECTION 6.07. Retention of State's Rights.

Notwithstanding any assignment or transfer of this Loan Agreement and the Loan Documents pursuant to the provisions hereof or of the Bond Indenture, or anything else to the contrary contained herein, the State shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Borrower at law or in equity, as the State may, in its discretion, deem necessary to enforce the obligations of the Borrower to the State pursuant to Sections 2.02, 2.08, and 6.04 hereof.

SECTION 6.08. Default by the State.

In the event of any default by the State under any covenant, agreement or obligation of this Loan Agreement, the Borrower's remedy for such default shall be limited to injunction, special action, action for specific performance or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of the State hereunder as may be necessary or appropriate.

**ARTICLE VII
MISCELLANEOUS**

SECTION 7.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Borrower at the address specified on Exhibit C hereof and to the State, the Issuer and the Trustee at the following addresses:

(a) State:

Economic and Community Development Department
Attention: Manager, Northwest Team
One World Trade Center, Suite 205
121 SW Salmon Street
Portland, OR 97204

(b) Issuer:

State Treasurer
Attention: Manager, Debt Management Division
100 Labor & Industries Building
Salem, OR 97301

(c) Trustee:
BNY Western Trust Company
Attention: Corporate Trust Department
Two Union Square
601 Union Street, Suite 525
Seattle, WA 98101

Any of the foregoing parties may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent, by notice in writing given to the others.

SECTION 7.02. Binding Effect.

This Loan Agreement shall inure to the benefit of and shall be binding upon the State and the Borrower and their respective successors and assigns. In addition, the Trustee shall be considered as a beneficial party to this Loan Agreement, with all attendant rights to enforce the duties, obligations, covenants and agreements of the Borrower set forth herein, to the same extent as if the Trustee was a party hereto.

SECTION 7.03. Severability.

In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

SECTION 7.04. Amendments, Supplements and Modifications.

This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the State and the Borrower. This Loan Agreement may not be amended, supplemented or modified in a manner that is not in compliance with the Act and the Bond Indenture or so as to adversely affect the interest of the owners of the State Bonds.

SECTION 7.05. Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 7.06. No Construction against Drafter. Both parties acknowledge that they are each represented by and have sought the advice of Counsel in connection with this Loan Agreement and the transactions contemplated hereby and have read and understand the terms of this Loan Agreement. The terms of this Loan Agreement shall not be construed against either party as the drafter hereof.

SECTION 7.07. Applicable Law.

This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, including the Act. Any claim, action, suit or proceeding (collectively, "Claim") between the State (and/or any agency or department of the State of Oregon) and the Borrower that arises from or relates to this Loan Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

SECTION 7.08. Consents and Approvals.

Whenever the written consent or approval of the State shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the State unless otherwise provided by law or by rules, regulations or resolutions of the State or unless expressly delegated to the Trustee.

SECTION 7.09. Merger; No Waiver.

This Loan Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Loan Agreement. No waiver of any provision of this Loan Agreement or consent shall bind either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver or consent, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of the State to enforce any provision of this Loan Agreement shall not constitute a waiver by the State of that or any other provision.

IN WITNESS WHEREOF, the State and the Borrower have caused this Loan Agreement to be executed and delivered, effective as of the date first set forth above.

STATE OF OREGON

CITY OF TIGARD

acting by and through its Economic and
Community Development Department

By: XXXXXXXXXXXXXXXXXXXXX
Joan P. Rutledge, Manager
Northwest Team

By: XXXXXXXXXXXXXXXXXXXXX
Craig Prosser
Finance Director

Date: XXXXXXXXXXXXXXXXXXXXX

Date: XXXXXXXXXXXXXXXXXXXXX

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

XXXXXXXXXXXXXXXXXXXXX
Michelle M. Teed, Assistant Attorney General

Date: XXXXXXXXXXXXXXXXXXXXX

Loan Agreement - Exhibit A
PROJECT DESCRIPTION

Borrower will implement the four phases of the Cook Park Master Plan, Cook Park Expansion. Borrower will construct facilities and infrastructure and complete improvements to existing trails, sports fields, sidewalks and roads on 28 acres of park property. Improvements are needed to improve the overall quality of life by helping alleviate the deficiency of open space affected by increasing growth pressures in the region.

Borrower will complete the following:

Phase 1

- Improvement to parking lot with 236 spaces (site improvements, storm drainage, landscaping and irrigation)
- Infrastructure (sanitary sewer, reclaimed water, potable water and electrical)
- Butterfly meadow (planting and irrigation)
- 85th Avenue emergency road connection (includes sidewalk)

Phase 2

- Tot lot (playground)
- Picnic shelter
- Gazebo
- Restroom

Phase 3

- Improvement to parking lot with 59 spaces (site improvements, storm drainage, landscaping and irrigation)
- Infrastructure (sanitary sewer and potable water)
- Maintenance Building
- Trails and regional connections

Phase 4 (Sports)

- Sports fields (grading, utilities, storm drainage, sanitary sewer, ball fields)
- Restroom/concession stand

SPECIAL PUBLIC WORKS FUND
PROJECT BUDGET

Borrower: City of Tigard Project No. K02001
Project Name: Cook Park Development

Activities	SPWF Loan	Oregon State Parks	Total
1. Water System Improvements	5,720	19,390	\$25,110
a.			0
b.			0
2. Sanitary Sewer Improvements	4,507	9,340	13,847
a.			0
b.			0
3. Storm Sewer Improvements	139,942	4,600	144,542
a.			0
b.			0
4. Road and Bridge Improvements	631,004	22,954	653,958
a.			0
b.			0
5. Public Transportation & Railroad Facility	0	0	0
a.			0
b.			0
6. Contractual Services	0	0	0
a.			0
b.			0
7. a. Engineering/Architectural			0
b. Administration	xxxxxx	0	0
c. Contingencies	292,667	30,553	323,220
8. Other			0
a. Buildings	960,518	88,358	1,048,876
b. Park Facilities	255,890	74,805	330,695
c.			0
9. Total all Expenses	\$2,290,248	\$250,000	\$2,540,248.00

DESCRIPTION OF THE LOAN

1. Loan Closing Date: The date of the first disbursement of Loan proceeds in accordance with Section 2.01(c)
2. Bond Closing Date: The Closing Date of the Series of Oregon Bond Bank Bonds, if any, that is applied to fund the Loan
3. Name and Address of Borrower: City of Tigard
13125 SW Hall Boulevard
Tigard, OR 97223
4. Cost of the Project: \$2,540,248
5. Estimated Completion Date of Project: June 30, 2003
6. Principal Amount of Loan: \$2,290,248
7. Interest Rate: The interest rate, including any adjustments to such rate, as described in the Note.
8. Optional Loan Prepayment Date: December 1, 2010
9. Prepayment Premium:

Redemption Dates	Redemption Prices
December 1, 2010 through November 30, 2011	102%
December 1, 2011 through November 30, 2012	101%
December 2012 and thereafter	100%

10. Authorized Officers of Borrower: Finance Director
11. Loan Term: Ten Years
12. Loan Closing Deadline: November 15, 2001
13. Unexpended Loan Proceeds
Transfer Date: September 1, 2003

SPECIAL CONDITIONS

1. The Loan will be payable from the revenues of and amounts on deposit in the Parks SDC Fund (the "Fund"), and the Borrower shall not issue any obligation payable from the Fund unless such obligation is subordinate to the Borrower's obligation to repay the Loan. The Borrower hereby grants to the State a security interest in and irrevocably pledges its revenues of the Fund to pay all of the obligations owed by the Borrower to the State under the Loan Agreement. Pursuant to ORS 288.594, the pledge of the revenues of the Fund hereby made by the Borrower shall be valid and binding from the date of this Loan Agreement.
2. The Borrower shall not incur any obligations payable from or secured by a lien on and pledge of revenues of the Fund that is superior to or on a parity with the Loan without the Department's written consent.
3. Notwithstanding the requirement of paragraph 2 above, loans previously made and loans made in the future by the Department to the Borrower that are secured by the revenues of the Fund shall have a lien on such revenues on a parity with the Loan.
4. The revenues of the Fund pledged pursuant to paragraph 1 above and hereafter received by the Borrower shall immediately be subject to the lien of such pledge without physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, except as provided in paragraph 2 above, to the fullest extent permitted by ORS 288.594. The Borrower hereby represents and warrants that the pledge of revenues of the Fund hereby made by the Borrower complies with, and shall be valid and binding from the date hereof pursuant to ORS 288.594.
5. The Loan shall be payable from the general fund of the Borrower and shall be a full faith and credit obligation of the Borrower which is payable from any taxes which the Borrower may levy within the limitations of Article XI of the Oregon Constitution.

**Oregon Economic and Community Development Department
Cash Request and Progress on Activities Form**

**Special Public Works Fund, Water/Wastewater Financing Program
or Safe Drinking Water Revolving Loan Fund**

Recipient _____

Address _____

Request is for:

☐ SPWF

☐ W/W

☐ SDWRLF

Cash Request # _____

Project Title _____

Project Number _____

Date _____

to _____
Progress Reporting Period

Total Project Expenditure Report (Including this Request) All the Project Funding Sources						Activities	Cash Request Only Economic Development Source			
A. Grant	B. Loan	C.	D.	E.	F. Total to Date	G.	H. Cash Request	I. Prior Requests	J. Approved Budget	K. Balance
						1. Water Improvements				
						a.				
						b.				
						2. Sanitary Sewer Improvements				
						a.				
						b.				
						3. Storm Sewer Improvements				
						a.				
						b.				
						4. Road and Bridge Improvements				
						a.				
						b.				
						5. Public Trans. and R. R. Facilities				
						a.				
						b.				
						6. Contractual Services				
						a.				
						b.				
						7. a. Engineering/Architectural				
						b. Administration				
						c. Contingencies				
						8. Other				
						a.				
						b.				
						c.				
						9. Total				

Cash On Hand: 1. Please show the amount of funds currently on hand (total prior monies received minus total expenditures) \$ _____
2. If you have funds on hand, attach information supporting the request for additional funds.

Mail this form to: Oregon Economic and Community Development Department
775 Summer Street NE, Salem, OR 97310

F:\USER\CD\SUP\CONTRACT\NFR\CASHREQ.WPD

Progress on Activities

Recipient _____ Project Number _____
Project Name _____ Report Period _____ to _____

A. Project Goals (report for every cash request)

List each project activity and describe progress on each activity since your last report. Also discuss any problems or delays encountered (change orders, schedule revisions, etc.). Attach additional sheets if necessary.

Proposed Accomplishments

Results Achieved

1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

B. Construction Employment (Special Public Works Fund only)

In the space below, show the cumulative total number of hours construction employees worked on the Infrastructure project. Also show cumulative construction man hours worked on any private business projects served by the infrastructure project.

Business Projects

Infrastructure Projects

1. Firm Name _____	Hours Worked _____
Hours Worked _____	
2. Firm Name _____	Hours Worked _____
Hours Worked _____	

C. Permanent Jobs (Special Public Works Fund only)

In the space below, show the cumulative number of new or retained permanent jobs in private businesses served by the infrastructure project. Show all jobs as full-time equivalents based on a standard 40-hour work week.

Firm Name _____	Firm Name _____	Firm Name _____
Jobs _____	New _____	Retained _____
Jobs _____	New _____	Retained _____
Jobs _____	New _____	Retained _____

Certification: We certify that the data is correct and that the amount of any grant request is not in excess of current needs. (TWO SIGNATURES REQUIRED)

Authorized Signature/Title _____ Date _____
Authorized Signature/Title _____ Date _____
Contact Person _____ Phone Number _____

Send Wire Transfers To:

Name of Payee: _____
Name of Receiving Bank: _____
Location or Branch Name of Bank: _____
Bank Address: _____
Bank Account Number: _____
Bank ABA Routing Number: _____

For State of Oregon Use

Total Amount Approved _____

Project Coordinator _____	Date _____
Amount _____	Description _____
Fund _____	Cost Center _____
\$ _____	
\$ _____	
\$ _____	
\$ _____	
\$ _____	
\$ _____	

Fiscal Coordinator _____ Date _____
Manager _____ Date _____

**Loan Agreement - Exhibit F
PROMISSORY NOTE**

**ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT
STATE OF OREGON**

US \$2,290,248

(Dated) XXXXXXXXXXXXXX, XXXX

Salem, OR

FOR VALUE RECEIVED, the City of Tigard (hereinafter "Borrower"), promises to pay in lawful money of the United States of America to the order of the STATE OF OREGON, ACTING BY AND THROUGH ITS ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT, at its principal office at 775 Summer Street NE, Suite 200, Salem, OR 97301-1280 (hereinafter "State"), the principal sum of Two Million Two Hundred Ninety Thousand Two Hundred and Forty-eight Dollars (\$2,290,248) or so much thereof as is disbursed pursuant to the Loan Agreement, plus interest on each disbursement at the rate of Two and Fifty-eight Percent (2.58%) per annum, from the disbursement date until paid; provided however that on the Bond Closing Date the interest rate shall be adjusted by the State to equal the lowest rate (in one basis point increments) that will be sufficient to ensure that the annual amounts paid by the Borrower pursuant to this Note shall be no less than the Borrower's pro-rata portion of the maximum annual debt service on the State Bonds. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12) thirty-day (30) months.

Capitalized terms not otherwise defined in this Note shall have the meanings assigned to them by the certain loan agreement dated XXXXXXXXXXXXXX, XXXX, between the State and the Borrower (as amended from time to time the "Loan Agreement").

Unless earlier repayment is received hereunder or under the terms of the Loan Agreement, Principal and Interest shall be payable as follows:

(a) The Borrower shall pay all interest accrued on disbursed loan funds on December 1 of each year beginning December 1, 2002 and continue until the earlier of December 1, 2011, or the first date that all Loan principal disbursed has been repaid, on which date all remaining unpaid accrued interest shall be due and payable.

(b) The Borrower shall pay the principal of this Note at the times and in the amounts specified on the Maturity Schedule set forth in Exhibit G to the Loan Agreement.

(c) This Note is payable prior to its maturity as provided for in Sections 2.05 and 2.06 of the Loan Agreement.

Each payment made by the Borrower hereunder shall be applied first to unpaid accrued interest on the Loan, then to the principal of the Loan.

This Note is given to avoid the execution by Borrower of an individual note for each disbursement of Loan proceeds by State to Borrower in accordance with Section 2.01 of the Loan Agreement. In consideration thereof, Borrower authorizes State to record in State's files the date and amount of each

such disbursement, the date and amount of each payment and prepayment by Borrower hereunder and the amount of interest accrued and paid. Borrower further agrees that absent manifest error, such notations shall be conclusive evidence of borrowing, payments and interest under this Note; provided, however, that failure to make any such notations shall not affect the obligations of Borrower hereunder or under any of the Loan Documents.

If any Event of Default occurs, the outstanding balance of the Note, including principal, interest and other charges, if any, shall, at the option of the State, become immediately due and payable in accordance with Section 6.03 of the Loan Agreement. Failure or delay of the holder of this Note to exercise any option available to the State under the terms of this Note or the Loan Agreement shall not constitute a waiver of the right to exercise the option in the event of any continuing or subsequent default and shall not constitute a waiver of any subsequent breach of the same or of any other provision of this Note or the Loan Agreement.

All parties to this Note hereby waive presentment, dishonor, notice of dishonor, and protest. All parties hereto hereby consent to, and the holder hereof is hereby expressly authorized to make, without notice, any and all renewals, extensions, modifications or waivers of the time for or the terms of payment of any sum of sums due hereunder, or under any documents or instruments relating to or securing this Note, or of the performance of any covenants, conditions or agreements hereof or thereof, or the taking or release of collateral securing this Note. The liability of all parties of this Note shall not be discharged by any action consented to above taken by any holder of this Note.

This Note is made with reference to, and is to be construed in accordance with, the laws of the State of Oregon.

This Note is subject to, and is secured pursuant to, the terms and conditions of the Loan Agreement.

IN WITNESS WHEREOF, Borrower has caused this Note to be executed this XXXX day of XXXXXXXXXXXXXXXXXXXX, XXXX.

City of Tigard

By: XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Title: XXXXXXXXXXXXXXXXXXXXXXXXXXXX

NOTICE TO BORROWER
DO NOT SIGN THIS NOTE BEFORE YOU READ IT

Loan Maturity Schedule
Tigard / Cook Park SPWF Loan

Exhibit G

File # K02001
PRINCIPAL AMOUNT: \$2,290,248
INTEREST RATE: 3.75%
LOAN TERM IN YEARS: 10
CLOSING DEADLINE 15-Nov-01

YEAR	DATE	PAYMENT
2002	01-Dec-02	278,863.67
2003	01-Dec-03	278,863.67
2004	01-Dec-04	278,863.67
2005	01-Dec-05	278,863.67
2006	01-Dec-06	278,863.67
2007	01-Dec-07	278,863.67
2008	01-Dec-08	278,863.67
2009	01-Dec-09	278,863.67
2010	01-Dec-10	278,863.67
2011	01-Dec-11	278,863.67

ENVIRONMENTAL AND NATURAL RESOURCE AGENCIES

The following list is provided in compliance with ORS 279.318. The federal, state, and local agencies listed have enacted ordinances or regulations relating to environmental pollution or the preservation of natural resources that may affect the performance of construction contracts.

FEDERAL AGENCIES

Agriculture, Department of
Forest Service
Soil Conservation Service
Army, Department of the
Corps of Engineers
Coast Guard
Energy, Department of
Environmental Protection Agency
Health & Human Services, Department of
Heritage Conservation and Recreation Service
Interior, Department of
Bureau of Indian Affairs
Bureau of Land Management
Fish and Wildlife Service
Office of Surface Mining, Reclamation and Enforcement
Bureau of Reclamation
Labor, Department of
Occupational Safety & Health Administration
Mine Safety & Health Administration
Transportation, Department of
Federal Highway Administration

STATE AGENCIES

Agriculture, Department of
Energy, Office of
Environmental Quality, Department of
Fish and Wildlife, Department of
Forestry, Department of
Geology and Mineral Industries, Department of
Human Resources, Department of
Land Conservation and Development Commission
State Lands, Division of
State Soil & Water Conservation Commission
Transportation, Department of
Water Resources Department

LOCAL AGENCIES

City Councils
County Courts
County Commissioners, Boards of
Planning Commissions
Special Districts: Ports, Water, Sewer, Roads

Community Facility
Loan Agreement

BETWEEN

STATE OF OREGON

acting by and through its

ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT

AND

CITY OF TIGARD

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Exhibit C	Description of the Loan
Exhibit D	Special Conditions
Exhibit E	Form of Requisition
Exhibit F	Form of Promissory Note
Exhibit G	Maturity Schedule

THIS LOAN AGREEMENT, is made and entered into as of _____, _____, by and between the STATE OF OREGON, ACTING BY AND THROUGH ITS ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT (the "State"), and the Borrower (as defined below). Capitalized terms not otherwise defined herein shall have the meanings assigned to them in Section 1.01 hereof.

WITNESSETH THAT:

WHEREAS, the State, in accordance with the Act, the Contract and the Bond Indenture, will provide funds in the Special Public Works Fund, and/or will issue State Bonds for the purpose of making loans to Municipalities, including the Borrower, to finance a portion of the cost of Community Facility projects within the meaning of ORS 285B.410 and 285B.422; and

WHEREAS, the Borrower has made timely application to the State for a Loan to finance all or a portion of the Costs of the Project, and the State has approved the Borrower's application for a Loan in the amount set forth in Exhibit C attached hereto and by this reference made a part hereof to finance a portion of the Costs of the Project; and

WHEREAS, the Borrower agrees under this Loan Agreement to make payments sufficient to pay when due the principal of, premium, if any, and interest on the Loan from the State in accordance with the Note, set forth on Exhibit F, the Maturity Schedule as set forth in Exhibit G and the terms herein; and

WHEREAS, the Borrower's obligations under this Loan Agreement and the other Loan Documents may be assigned to the Trustee under the Bond Indenture, to provide for the payment of and security for State Bonds issued by the State of Oregon;

NOW, THEREFORE, for and in consideration of the award of the Loan by the State, the Borrower agrees to perform its obligation under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein.

**ARTICLE I
DEFINITIONS**

SECTION 1.01. Definitions. The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the meanings assigned to them below:

"Act" means ORS 285B.410 through 285B.482, as amended.

"Authorized Officer" means, in the case of the Borrower, the persons whose names are set forth in Exhibit C hereto or such other person or persons authorized pursuant to a resolution, ordinance or other official action of the governing body of the Borrower to act as an authorized officer of the Borrower to perform any act or execute any document relating to the Loan or this Loan Agreement and whose name is furnished in writing to the State.

"Bond Closing Date" means the closing date of the sale of the State Bonds.

"Bond Counsel" means a law firm having knowledge and expertise in the field of municipal law and whose opinions are generally accepted by purchasers of municipal bonds.

“Bond Indenture” means the Indenture of Trust dated as of July 1, 1993, between the State, the Issuer, and the Trustee, pursuant to which the State Bonds are issued, and all amendments and supplements thereto adopted in accordance with the provisions thereof.

“Borrower” means the Municipality that is a party to this Loan Agreement and is described on Exhibit C hereto, and its successors and assigns.

“Business Day” means any day other than (a) a Saturday, Sunday or legal holiday or a day on which banking institutions in Salem, Oregon or in the city in which the principal office of the Trustee is located are closed, or (b) a day on which the New York Stock Exchange is closed.

“Code” means the Internal Revenue Code of 1986, as amended or supplemented from time to time, including any regulations promulgated thereunder and any administrative or judicial interpretations thereof.

“Completion Date” means the earlier of (a) the date on which all of the proceeds of the Loan, including any investment earnings derived from the investment of such proceeds, have been spent by Borrower, or (b) the second anniversary of the Loan Closing Date.

“Contract” means the Financial Assistance Award Contract between the State and the Borrower, dated as of _____.

“Costs of the Project” means those costs that are (a) reasonable, necessary and directly related to an “infrastructure project” within the meaning of ORS 285B.410(2), including any financing costs properly allocable to the Project and preliminary costs such as engineering and architectural reports, studies, surveys, soil tests, designs, plans, working drawings and specifications that are necessary for the construction of the Project, and (b) permitted by generally accepted accounting principles to be costs of such Project. The term “Costs of the Project” does not include (i) costs in excess of one-hundred percent (100%) of the total cost of the Project, (ii) the purchase of equipment and other property not directly related to the Project, (iii) construction or repair of facilities owned or operated by private parties, (iv) costs incurred prior to the date of the Contract, except as provided in Section 3.02(a) hereof, (v) administrative expenses of the Borrower or (vi) costs that do not comply with the requirements of the General Certificate executed by the Borrower in connection with the closing of the Loan.

“Counsel” means an attorney at law or firm of attorneys at law (who may be, without limitation, of counsel to, or an employee of, the State, the Issuer, the Trustee or the Borrower) duly admitted to practice law before the highest court of any state.

“Event of Default” means any occurrence or event specified in Section 6.01 hereof.

“Issuer” means the State of Oregon acting by and through the State Treasurer of the State of Oregon.

“Loan” means the loan made by the State to the Borrower to finance or refinance a portion of the Costs of the Project pursuant to this Loan Agreement. The Loan may be funded by proceeds of State Bonds or from other amounts held in the Special Public Works Fund.

“Loan Agreement” means this loan agreement, including any exhibits, schedules or attachments hereto, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

“Loan Closing Date” means the date of the first disbursement of Loan proceeds in accordance with Section 2.01(c) hereof.

“Loan Closing Deadline” means the date by which all conditions precedent Loan Closing must be satisfied, as set out in Exhibit C attached hereto.

“Loan Documents” means the Loan Agreement, Note, and any agreements, instrument and certificates required to be executed and delivered hereunder.

“Loan Prepayment” means any amounts paid by the Borrower that are in excess of the amount required to be paid as a Loan Repayment.

“Loan Repayment” means the scheduled payments of principal and interest required to be made by the Borrower pursuant to the Note, including the Maturity Schedule.

“Loan Term” means the term of the Loan as set forth in the Note.

“Maturity Schedule” shall mean the scheduled payments of principal and interest required to be made by the Borrower pursuant to the schedule set forth in Exhibit G, attached hereto and by this reference incorporated herein.

“Municipality” means any entity described in ORS 285B.410(1) that has entered into a Contract with the State pursuant to which such entity will borrow money from the Special Public Works Fund.

“Note” means the promissory note of the Borrower substantially in the form of Exhibit F attached hereto and by this reference made a part hereof.

“Optional Loan Prepayment Date” means the Optional Loan Prepayment Date described in Exhibit C hereto.

“Project” means an “infrastructure project”, within the meaning of ORS 285B.410(2), of the Borrower described in Exhibit A attached hereto and by this reference made a part hereof, all or a portion of the of which is financed or refinanced by the State pursuant to this Loan Agreement.

“Project Completion Date” means the earlier of (a) the date on which all of the proceeds of the Loan, including any investment earnings derived from the investment of such proceeds, have been spent by Borrower; or (b) the date on which the Borrower completes construction of the Project.

“Revenues” means the revenues, including all legally available funding, identified in Section 2.07 hereof or in Exhibit D to Borrower’s Loan Agreement as a source of repayment for the Loan

“Special Public Works Fund” means the fund created by ORS 285B.455(1).

“State” means the State of Oregon acting by and through its Economic and Community Development Department.

“State Bonds” means the series of bonds, if any, authorized by the Bond Indenture and the Act, together with any refunding bonds authenticated and delivered pursuant to the Bond Indenture, in each case to finance or refinance the Project through the initial funding or refinancing of all the Loan.

“System” means the utility system or systems, if any, of the Borrower which includes the Project or components of the Project, as such system or systems may be modified or expanded from time to time. References in this Loan Agreement to the Borrower’s “System” shall be ignored to the extent that the Project is not a component of a utility system or systems.

“Trustee” means the Trustee pursuant to the Bond Indenture, or its successor or successors, and any other corporation which may at any time be substituted in its place as Trustee pursuant to the Bond Indenture.

“Underwriter” means the broker, dealer or municipal securities dealer acting as an underwriter in the primary offering of the State Bonds.

SECTION 1.02. General Rules.

Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, partnerships, agencies and districts. Words importing one gender shall include any other gender.

SECTION 1.03. Loan Agreement Not Assigned to Trustee.

DURING ANY PERIOD OF TIME IN WHICH THIS LOAN AGREEMENT HAS NOT BEEN ASSIGNED TO THE TRUSTEE, ALL REFERENCES IN THIS LOAN AGREEMENT TO “TRUSTEE,” “BOND INDENTURE,” “STATE BONDS,” “UNDERWRITER” AND “ISSUER” AND THE PROVISIONS OF THIS LOAN AGREEMENT PERTAINING THERETO SHALL BE VOID AND OF NO FORCE OR EFFECT EXCEPT FOR PURPOSES OF DETERMINING THE APPLICABLE REQUIREMENTS OF THE BOND INDENTURE OR DETERMINING ANY REQUIREMENTS OF THIS LOAN AGREEMENT THAT REFER TO PROVISIONS OF THE BOND INDENTURE.

ARTICLE II LOAN TO BORROWER

SECTION 2.01. Loan Amount; Loan Terms; Disbursements; Use of Proceeds.

(a) Loan Amount. Subject to the terms and conditions hereof, in particular Sections 4.01 and 4.02 hereof, the State hereby agrees to loan and disburse to the Borrower, and the Borrower agrees to borrow and accept from the State, the Loan which, in the aggregate, shall not exceed the lesser of (i) the maximum principal amount of the Loan set out in Exhibit C hereof, or (ii) the Costs of the Project.

(b) Loan Terms. The terms of the Loan are set forth in Exhibit F hereto.

(c) Disbursements. Subject to Sections 4.01 and 4.02 hereof, the proceeds of the Loan shall be disbursed to the Borrower on an expense reimbursement or cost incurred basis upon receipt by the State of a requisition executed by the Borrower in substantially the form attached hereto as Exhibit E which is by this reference incorporated herein.

(d) Use of Proceeds. The Borrower shall use the proceeds of the Loan strictly in accordance with Section 3.02(a) hereof.

SECTION 2.02. Loan Payment.

(a) Payment. The Borrower hereby covenants and agrees to repay the Loan in accordance with the Contract (including but not limited to the terms of Exhibit D of the Loan Agreement thereto), the terms hereof and of the Note, including the Maturity Schedule. Borrower agrees to pay interest at the rate as adjusted after the sale of State Bonds, if any, as specified in the Note and other Loan Documents and acknowledges that this rate may be higher than the interest rate for direct loans through the Special Public Works Fund.

(b) Payments if Assignment. In the event that the Borrower receives written notification from the State, the Issuer or the Trustee that payments made pursuant to this Loan Agreement and Note have been assigned by the State to the Trustee under the Bond Indenture, all payments pursuant to this Loan Agreement and the Note shall be made directly to the Trustee for the account of the State pursuant to such assignment. The Borrower acknowledges that payment or defeasance of the State Bonds by the State or the Issuer does not constitute payment of the amounts due under this Loan Agreement or the Note.

SECTION 2.03. Unconditional Obligations.

The provisions of the Loan Agreement shall constitute a contract with the State and shall be enforced by the State or the Trustee as assignee pursuant to Section 5.01 hereof. Loan Repayments and all other payments required under the Loan Documents are payable solely from the sources of repayment described in Section 2.07 hereof. The Loan shall be a full faith and credit obligation of Borrower, and the obligation of the Borrower to make the Loan Repayments and all other payments required under the Loan Documents and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part to be performed or observed contained therein shall be absolute and unconditional. Payments hereunder and under any of the other Loan Documents shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, or any payments under this Loan Agreement or Note remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of considerations, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project or the System, commercial frustration of the purpose, any change in the laws of the United States of America or of the State of Oregon or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the State, the Issuer or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project, this Loan Agreement or the Bond Indenture or any rights of set off, recoupment, abatement or counterclaim that the Borrower might otherwise have against the State, the Issuer, the Trustee or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights. The Borrower shall not be obligated to make any payments required to be made by any other Municipality under any separate loan agreement or the Bond Indenture.

SECTION 2.04. Loan Agreement to Survive Bond Indenture and State Bonds.

The Borrower acknowledges that its duties, covenants, obligations and agreements hereunder shall survive the discharge of the Bond Indenture applicable to the State Bonds and payment of the principal of, redemption premium, if any, and interest on the State Bonds.

SECTION 2.05. Loan Prepayments.

(a) Mandatory Prepayment. The Borrower shall prepay the outstanding balance of the Loan upon the destruction of all or a substantial portion of the Project.

(b) Optional Prepayment on or after the Optional Loan Prepayment Date. Subject to the following terms and conditions, the Borrower may make Loan Prepayments upon not less than ninety (90) days prior written notice to the State and the Trustee; provided, however, that

(i) no Loan Prepayment shall be made prior to the Optional Loan Prepayment Date or, if later, the date on which the State Bonds are first subject to optional redemption;

(ii) each Loan Prepayment shall include (A) payment of the accrued interest on the amount prepaid and (B) the prepayment premium, if any, applicable to such Loan Prepayment as determined in accordance with Exhibit C hereof, and (C) the payment of any expenses of the Trustee, Counsel to the State or Bond Counsel associated with such prepayment; and

(iii) no Loan Prepayment shall be made without the prior written approval of the State.

(c) Optional Prepayment prior to the Optional Loan Prepayment Date. Loan Prepayments may be made prior to the Optional Loan Prepayment Date if (i) the Borrower obtains the prior written approval of the State, (ii) an opinion is obtained from the State's Bond Counsel to the effect that such a Loan Prepayment will not adversely affect the exclusion from gross income for federal and state income tax purposes of the interest on the State Bonds and the Loan, (iii) an escrow fund is established with the State or with an escrow agent acceptable to the State, and a deposit shall have been made to such escrow fund of cash and/or United States Treasury obligations which are not subject to redemption or prepayment and maturing as to principal and interest in such amounts and at such times as will, in the opinion of an independent certified public accountant delivered to the State, provide sufficient moneys, without reinvestment of any matured amounts, to make all payments of principal and interest on the Loan or portion to the Loan to be prepaid to and including the Optional Loan Prepayment Date together with any applicable prepayment premium, and (iv) the investment of amounts held in the escrow fund satisfies the requirements of Section 148 of the Code.

(d) General. Loan Prepayments shall be applied first to any expenses of the Trustee, then to accrued interest on the portion of the Loan prepaid, and finally to principal payment(s) on the Loan (including premium, if any). In the case of a Loan Prepayment that does not prepay all of the principal of the Loan, the State shall determine, in its sole discretion, the method by which such Loan Prepayment shall be applied to the outstanding principal payments. In the case of any Loan Prepayment prior to the Optional Loan Prepayment Date, Loan Prepayments shall be applied to the expenses of establishing an escrow fund and paying any expenses of the Counsel to the State, Bond Counsel and any independent certified public accountant required in connection with the actions required pursuant to paragraph (c) above, before such Loan Prepayments are applied to the payment of interest, principal or any redemption premium on the Loan.

SECTION 2.06. Unexpended Loan Proceeds. Any proceeds of the Loan held by the State on the Project Completion Date shall be applied, together with any interest earnings thereon, on the Optional Loan Prepayment Date specified in Exhibit C hereof:

First, to pay any arbitrage rebate due with respect to the Loan pursuant to Section 148(f) of the Code,

Second, to pay unpaid interest accrued to the Optional Loan Prepayment Date, and

Third, to prepay principal on the Loan and any prepayment premium specified on Exhibit C hereof associated with such prepayment.

The State shall determine, in its sole discretion, the method by which any payments on the Loan pursuant to this Section 2.06 shall be applied to the outstanding balance of the Loan. If any proceeds of the Loan remain after the payment of the entire outstanding principal balance of the Loan and the prepayment premium specified in Exhibit C, such amounts shall be the property of the State, and the Borrower shall have no claim to such amounts.

SECTION 2.07. Sources of Payment of Borrower's Obligations.

(a) The State and the Borrower agree that the amounts payable by the Borrower under this Loan Agreement and any of the other Loan Documents, including, without limitation, the amounts payable by the Borrower pursuant to Sections 2.02, 2.05, 2.08 and 6.04 hereof, are payable from the sources of repayment described in paragraph (b) of this Section 2.07; provided however that nothing herein shall be deemed to prevent the Borrower from paying the amounts payable under this Loan Agreement and the other Loan Documents from any other legally available source.

(b) The amounts payable by the Borrower under this Loan Agreement and the other Loan Documents are payable from the Revenues, including legally available funds in the Borrower's general fund, and other sources identified in the Special Conditions of Award set forth in Exhibit D to the Borrower's Loan Agreement. The pledges made by the Borrower in these Special Conditions of Award shall be valid and binding from the date of this Loan Agreement pursuant to ORS 288.594. The amounts so pledged and hereafter received by the Borrower shall immediately be subject to the lien of the pledge without physical delivery or further act except as may be stated in the Special Conditions of Award and shall be superior to all other claims and liens whatsoever to the fullest extent permitted by ORS 288.594.

The Borrower expressly acknowledges that if the Borrower defaults on payments due under this Loan Agreement or any of the other Loan Documents, the State of Oregon, pursuant to ORS 285B.449, may withhold all or a portion of any amounts otherwise due to the Borrower and apply said amounts to payments due under this Loan Agreement and the other Loan Documents to the fullest extent permitted by law; provided however that the provisions of the Loan Agreement and the Note are not to be construed in a way that would cause the obligations of the Borrower thereunder to constitute debt which violates Section 10, Article XI of the Oregon Constitution.

SECTION 2.08. Disclaimer of Warranties; Limitation of Liability; Indemnification.

The Borrower acknowledges and agrees that:

(a) neither the Issuer, the State nor the Trustee makes any warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the System or the Project or any portions thereof or any other warranty or representation with respect thereto;

(b) in no event shall the State, the Issuer or the Trustee or their respective agents be liable or responsible for any direct, indirect, incidental, special or consequential damages in connection with or arising out of this Loan Agreement, any of the other Loan Documents or the Project or the existence,

furnishing, functioning or use of the System or the Project or any item or products or services provided for in this Loan Agreement; and

(c) to the extent authorized by law, the Borrower shall indemnify, save and hold harmless the Issuer and the State against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Borrower, or its employees, agents or subcontractors pursuant to the terms of this Loan Agreement or any of the other Loan Documents, provided, however, that the provisions of this paragraph (c) are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

SECTION 3.01. Representations and Warranties of Borrower.

The Borrower represents and warrants for the benefit of the State and the holders of the State Bonds, if any, as follows:

(a) Organization and Authority.

(i) The Borrower is a Municipality as defined in the Act.

(ii) The Borrower has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain the Project and its System, other than licenses and permits relating to the Project which the Borrower expects to receive in the ordinary course of business, to carry on its activities relating thereto, to execute and deliver this Loan Agreement, to undertake and complete the Project, and to carry out and consummate all transactions contemplated by this Loan Agreement and the other Loan Documents.

(iii) The Project is a project which the Borrower may undertake pursuant to Oregon law and for which the Borrower is authorized by law to borrow money.

(iv) The proceedings of the Borrower's governing members and voters, if necessary, approving this Loan Agreement and the other Loan Documents and authorizing the execution and delivery of this Loan Agreement and other Loan Documents on behalf of the Borrower, and authorizing the Borrower to undertake and complete the Project have been duly and lawfully adopted in accordance with the laws of Oregon, and the actions of such proceedings were duly approved and published, if necessary, in accordance with applicable Oregon law, at a meeting or meetings which were duly called pursuant to necessary public notice and held in accordance with applicable Oregon law, and at which quorums were present and acting throughout.

(v) This Loan Agreement and all other Loan Documents required hereunder to be executed by Borrower have been duly authorized and executed and delivered by an Authorized Officer of the Borrower; and, assuming that the State has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered, this Loan Agreement and the Loan Documents required hereunder to be executed by the State, this Loan Agreement and other Loan Documents required hereunder to be executed by the Borrower constitute the legal, valid and binding

obligation of the Borrower in accordance with their terms, and the information contained in Exhibits A and B hereto and in Sections 3, 4, 9 and 11 of Exhibit C hereto is true and accurate in all respects.

(vi) Borrower's Contract and the Loan Agreement have been authorized by ORS 285B.437(1) and an ordinance of the Borrower which was adopted in accordance with ORS 285B.443(3) after proper publication at least fourteen (14) days prior notice published at least once in a newspaper of general circulation within the Borrower's jurisdiction and was adopted in accordance with applicable law and the Borrower's requirements for filing public notices and holding public meetings.

(b) Full Disclosure.

There is no fact that the Borrower has not disclosed to the State in writing on the Borrower's application for the Loan or otherwise that materially adversely affects the properties, activities, prospects or condition (financial or otherwise) of the Borrower, the Project or the Borrower's System, or the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents. Neither the Borrower's application for the Loan or the Borrower's representations in this Loan Agreement or any of the other Loan Documents contain any untrue statement of a material fact or omits any statement or information which is necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(c) Pending Litigation.

There are no proceedings pending, or, to the knowledge of the Borrower threatened, against or affecting the Borrower, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the Project, properties, activities, prospects or condition (financial or otherwise) of the Borrower or its System, or the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents, that have not been disclosed in writing to the State in the Borrower's application for the Loan or otherwise.

(d) Compliance with Existing Agreements, Etc.

The authorization, execution and delivery of this Loan Agreement and the other Loan Documents by the Borrower, the observation and performance by the Borrower of its duties, covenants, obligations and agreements thereunder and the consummation of the transactions provided for in this Loan Agreement and the other Loan Documents, the compliance by the Borrower with the provisions of this Loan Agreement and the other Loan Documents and the undertaking and completion of the Project will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or asset of the Borrower pursuant to, any existing ordinance or resolution, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument (other than any lien and charge of this Loan Agreement or any of the documents related hereto or to the Bond Indenture) to which the Borrower is a party or by which the Borrower, its System or any of its property or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Borrower was established or any laws, ordinances, resolutions, governmental rules, regulations or court orders to which the Borrower, its System or its properties or operations is subject.

(e) No Defaults.

No event has occurred and no condition exists that, upon authorization, execution and delivery of this Loan Agreement or any of the Loan Documents or receipt of the amount of the Loan, would constitute an

Event of Default hereunder. The Borrower is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party or by which it, its System or its property may be bound, which violation would materially adversely affect the Project, properties, activities, prospects or condition (financial or otherwise) of the Borrower or its System or the ability of the Borrower to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents.

(f) Governmental Consent.

The Borrower has obtained or will obtain all permits and approvals required to date by any governmental body or officer for the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents or for the undertaking or completion of the Project and the financing or refinancing thereof; and the Borrower has complied or will comply with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents or with the undertaking or completion of the Project and the financing or refinancing thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental body or officer that has not been obtained is required on the part of the Borrower as a condition to the authorization, execution and delivery of this Loan Agreement or any other Loan Document.

(g) Compliance with Law.

The Borrower:

(i) is in compliance with all laws, ordinances, and governmental rules and regulations to which it is subject, the failure to comply with which would materially adversely affect the ability of the Borrower to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of the Borrower or its System; and

(ii) has obtained or will obtain all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership of its property or for the conduct of its activities which, if not obtained, would materially adversely affect the ability of the Borrower to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of the Borrower or its System.

The State's performance under this Loan Agreement is conditioned upon the Borrower's compliance with the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which are incorporated by reference herein.

(h) The Project.

(i) The Project is feasible, and there will be adequate funds available to complete the Project and repay the Loan.

(ii) The Borrower has been provided with a copy of the rules adopted by the State under ORS 285B.419(1), and the Project is in compliance with such rules.

(iii) The Loan Term is not in excess of the useful life of the Project.

(iv) The Borrower has adequate financial resources to ensure the project's success.

(v) The Project will benefit a broad cross-section of the community.

(vi) The Project is situated in a city or county with a comprehensive land use plan that allows industrial and commercial development of a type and scale that is sufficient to produce revenues to repay the costs of the Project.

(vii) To the extent shown in the Special Conditions of Award, the Borrower has provided as part of the security for repayment of the Loan, provisions for payments from any owners of property specially benefited by the Project which are sufficient when considered with other security to assure repayment of the Loan and the portion of any State Bonds that fund or refinance the Loan.

(i) Costs of the Project.

The Borrower certifies that the Costs of the Project, as listed in Exhibits B and C hereto, (i) are a reasonable and accurate estimation and based upon an engineer's feasibility report and engineer's estimate stamped by a registered professional engineer, or an architect's feasibility report and architect's estimate stamped by a licensed architect, as applicable, a copy of which shall be promptly provided to the State upon request, (ii) exceeds the principal amount of the Loan shown on Exhibit C, and (iii) are not less than the sum of the proceeds of the Loan and the investment earnings projected to be derived from the investment of such proceeds. The Borrower further certifies that a registered professional engineer or licensed architect, in good standing in Oregon, will be responsible for design and construction of the Project.

(j) Continuing Representations.

The representations of the Borrower contained herein shall be true at the time of the Loan Closing Date and at all times during the term of this Loan Agreement.

SECTION 3.02. Particular Covenants of the Borrower.

(a) Use of Proceeds.

The Borrower will apply the proceeds of the Loan and interest earnings thereon (i) to finance all or a portion of the Costs of the Project; and (ii) where applicable and with prior written approval of the State, to reimburse the Borrower for a portion of the Costs of the Project, which portion was paid or incurred in anticipation of reimbursement by the State; provided however that all such reimbursements shall satisfy the requirements of Section 1.150-2 of the tax regulations promulgated under the Code. None of the proceeds of the Loan shall be used for ineligible activities as specified in Section 3.B. of the Contract.

(b) Source of Repayment.

The Loan shall be paid from such sources of repayment described in Section 2.07 hereof and the Special Conditions of Award set forth in Exhibit D to the Loan Agreement. Funds from such sources shall be applied to the punctual payment of the principal of and the interest on the Loan and all other amounts due under this Loan Agreement and the other Loan Documents according to their respective terms.

(c) Performance Under Loan Documents.

The Borrower covenants and agrees (i) to maintain the Project and its System in good repair and operating condition; (ii) to cooperate with the State in the observance and performance of the respective duties, covenants, obligations and agreements of the Borrower and the State under this Loan Agreement and the other Loan Documents; and (iii) to comply with the covenants described in this Loan Agreement and the other Loan Documents.

(d) Completion of Project and Provision of Moneys Therefore.

The Borrower covenants and agrees to provide the State with copies of all plans and specifications relating to the Project for review and approval by the State, but in any event no later than ten days prior to the date on which bids are advertised. The Borrower shall obtain as-built drawings for all facilities of the Project and obtain certification of completion per as-built drawings from the Project engineer or architect within ninety (90) days of the Project Completion Date. The Borrower shall supply a copy of such drawings and certification to the State upon request. The Borrower further covenants and agrees (i) to exercise its best efforts in accordance with prudent practice to complete the Project and to so accomplish such completion on or before the estimated Project Completion Date set forth in Exhibit C; (ii) to proceed expeditiously with, and complete, the Project in accordance with plans reviewed and approved by the State and (iii) to provide from its own fiscal resources all moneys, in excess of the total amount of Loan proceeds it receives pursuant to this Loan Agreement, required to complete the Project. For purposes of (ii) of the preceding sentence, if the State does not review the plans and specifications or suggests modifications thereto within thirty (30) days of the receipt by the State of the plans and specifications, they shall be deemed approved. The Borrower shall have a program, documented to the satisfaction of the State, for the on-going maintenance, operation and replacement, at its sole expense, of the Project. The program shall include a plan for generating revenues sufficient to assure the operation, maintenance and replacement of the Project during the useful life of the Project. Borrower shall provide such documentation to the State on or before the Project Completion Date.

(e) Disposition of Project or System.

Unless worn out, obsolete, or in the reasonable business judgement of the Borrower, no longer useful in the operation of the Project, the Borrower shall not sell, lease, exchange, abandon or otherwise dispose of all or substantially all or any substantial portion of the Project or its System or any other system which provides revenues for payment of amounts due under this Loan Agreement and the Loan Documents, except (i) if the State consents thereto in writing upon ninety (90) days' prior written notice to the State and (ii) either:

(i) The Borrower assigns this Loan Agreement and the other Loan Documents pursuant to Section 5.02 hereof,

(ii) The Borrower demonstrates to the satisfaction of the Trustee that such sale, lease, abandonment or other disposition will not adversely affect the rating of the State Bonds,

(iii) A rating of the Loan is obtained which (a) addresses such sale, lease, exchange, abandonment or other disposition, (b) is no lower than the rating of the State Bonds and (c) shall be in one of the three highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) by Moody's Investors Service or Fitch Investors Service, Inc., or

(iv) The State certifies to the Borrower that this Loan Agreement has not been assigned to the Trustee and provides a copy of such certification to the Trustee.

The State shall not consent to any such sale, lease, exchange, abandonment or other disposition unless the State shall have received an opinion of Bond Counsel to the effect that such sale, lease, exchange, abandonment or other disposition complies with the Act and will not adversely affect the

exclusion of interest on the Loan and on the State Bonds from gross income for purposes of federal income taxation under Section 103(a) of the Code (as defined in the Loan Agreement). Proceeds of any such transfer not used to replace property that is part of the Project shall be applied to the payment of the outstanding principal of and interest in the Loan as a Loan Prepayment subject to a prepayment premium, if any, as provided in Section 2.05 of this Agreement.

(f) Exclusion of Interest from Federal Gross Income and Compliance with Code.

(i) The Borrower covenants and agrees that it shall not take any action or omit to take any action which action or omission would result in the loss of the exclusion of the interest on the Loan from gross income for purposes of federal income taxation as that status is governed by Section 103(a) of the Code.

(ii) The Borrower shall not take any action or omit to take any action, which action or omission would cause the Loan to be a "private activity bond" within the meaning of Section 141(a) of the Code. Accordingly, unless the Borrower receives the prior written approval of the State, the Borrower shall neither (A) permit in excess of 10 percent of either (1) the proceeds of the Loan or (2) the Project financed or refinanced with the proceeds of the Loan, to be used directly or indirectly in any manner that would constitute "private business use" within the meaning of Section 141(b)(6) of the Code, nor (B) use directly or indirectly any of the proceeds of the Loan, to make or finance loans to persons other than governmental units as such term is used in Section 141(c) of the Code; provided further, that at least one half of the private business use permitted by clause (A) shall be neither disproportionate related business use, nor private business use not related to the government use of such proceeds of the Loan.

(iii) The Borrower shall not directly or indirectly use or permit the use of any of the "gross proceeds" (within the meaning of Section 148 of the Code) of the Loan or any other funds or take any action or omit to take any action, which use or action or omission would cause the Loan to be an "arbitrage bond" within the meaning of Section 148(a) of the Code.

(iv) The Borrower shall not use directly or indirectly the proceeds of the Loan in any manner that would constitute an "advance refunding" within the meaning of Section 149(d)(5) of the Code and shall not prepay the Loan or any part of the Loan without the prior written approval of the State and as provided in this Loan Agreement.

(v) The Borrower will not cause the Loan to be treated as a "federally guaranteed" obligation for purposes of Section 149(b) of the Code. For purposes of this paragraph, the Loan shall be treated as "federally guaranteed" if: (A) all or any portion of the principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality thereof, or (B) five percent (5%) or more of the proceeds of the Loan will be (1) used in making loans, the payment of principal or interest with respect to which is guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (2) invested directly or indirectly in federally insured deposits or accounts, and (C) none of the exceptions described in Section 149(b)(3) of the Code apply.

(vi) The Borrower agrees to assist the State, the Issuer and the Trustee to ensure that all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code are rebated to the United States of America. The Borrower agrees to provide all amounts necessary to

satisfy the requirements of Section 148(f) applicable to the Loan and, to pay to the State, the Issuer, or the Trustee such amounts as may be directed by the State, the Issuer, or the Trustee and at such times as the Borrower may be so directed to satisfy the requirements of Section 148(f) of the Code applicable to the portion of the proceeds of any State Bonds, including any proceeds or other amounts held in a reserve fund, applied to fund or refinance the Loan. The Borrower further agrees to reimburse the State, the Issuer or the Trustee for the portion of any expenses incurred by them that relate to the Loan and are necessary to satisfy the requirements of Section 148(f) of the Code.

(vii) In furtherance of the foregoing, the Borrower covenants that it will comply with the provisions of this Loan Agreement and with the provisions of any certificate executed by the Borrower relating to compliance with the provisions of Sections 103 and 141 through 150 of the Code executed by the Borrower, the State or the Issuer with respect to the Loan and will furnish to the State, the Issuer, or the Trustee in writing, upon reasonable request, information regarding investments and use of proceeds of the Loan and of any facilities financed or refinanced therewith.

(viii) The Borrower shall not enter into any management agreement for the operation of the Project that would cause the Loan to be or become a "private activity bond" within the meaning of Section 141(a) of the Code.

(ix) Notwithstanding anything to the contrary, so long as is necessary to maintain the exclusion from gross income for purposes of federal income taxation of interest on the Loan, the covenants contained in this subsection (f) shall survive the payment of the Loan and the State Bonds, and the interest thereon, including any payment pursuant to Section 2.05 of this Loan Agreement. The Borrower acknowledges that the Loan may be funded with the proceeds of the State Bonds and that failure to comply with the requirements of this subsection (f) could adversely affect any exclusion of the interest on the State Bonds from gross income for federal income tax purposes.

(x) Neither the Borrower nor any related party to the Borrower, within the meaning of Section 1.150-1(b) of the federal income tax regulations shall purchase State Bonds in an amount related to the amount of the Loan.

(g) Operation and Maintenance of Project and System

The Borrower covenants and agrees that it shall, in accordance with prudent ownership practice, (i) at all times operate the Community Facility Project so as to preserve the long term public benefits of the Project, (ii) maintain the Project and the System in good repair, working order and operating condition, including from time to time making all necessary and proper repairs, renewals, replacements, additions, betterments and improvements as may be required.

(h) Records; Accounts.

The Borrower shall keep accurate records and accounts for the revenues and funds that are the source of repayment of the Loan, including but not limited to the Revenues (the "Repayment Revenue Records"), separate and distinct from its other records and accounts (the "General Records"). Such Repayment Revenue Records shall be maintained in accordance with generally accepted accounting principles as established by the Government Accounting Standards Board as in effect from time to time and shall be audited annually by an independent accountant, which audit may be part of the annual audit of the General Records of the Borrower. Such Repayment Revenue Records and General Records shall be made available for inspection by the State, the Issuer or the Trustee at any reasonable time, and a copy of such annual audit(s) therefore,

including all written comments and recommendations of such accountant, shall be furnished to the State within 210 days of the close of the fiscal year being so audited. The Borrower's financial management system must conform with the generally accepted accounting principles for state and municipal corporations established by the National Committee on Governmental Accounting as in effect from time to time.

(i) Inspections; Information.

The Borrower shall permit the State and the Trustee and any party designated by any of such parties to examine, visit and inspect, at any and all reasonable time, the property, if any, constituting the Project, and to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the State and the Trustee may reasonably require in connection therewith. In addition, the Borrower shall provide the State with copies of loan documents or other financing documents and any official statements or other forms of offering prospectus relating to any other bonds, notes or other indebtedness of the Borrower that are issued after the Loan Closing Date and are secured by the Revenues.

(j) Insurance.

The Borrower shall maintain or cause to be maintained, insurance policies with responsible insurers or self insurance programs providing against risk of direct physical loss, damage or destruction of the Project and System, at least to the extent that similar insurance is usually carried by governmental units constructing, operating and maintaining similar facilities, including liability coverage, all to the extent available at reasonable cost. Nothing herein shall be deemed to preclude the Borrower from exerting against any party, other than the State, a defense which may be available to the Borrower, including without limitation a defense of immunity. In the event the Project or any portion thereof is destroyed, any insurance proceeds shall be paid to the State and shall be applied to the principal of and interest on the Loan, unless the State agrees in writing that the insurance proceeds shall be used to rebuild the Project. Any application of insurance proceeds to prepay the outstanding principal of the Loan shall not be subject to the prepayment premium, if any, as provided in Section 2.05(b).

(k) Condemnation.

In the event the Project or any portion thereof is condemned, any condemnation proceeds shall be used to prepay the outstanding balance on the Loan and shall not be subject to the prepayment premium, if any, as provided in Section 2.05(b).

(l) Notice of Material Adverse Change.

The Borrower shall promptly notify the State and the Trustee of any material adverse change in the activities, prospects or condition (financial or otherwise) of the Borrower, the Project, or the Borrower's System, or in the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement and the other Loan Documents.

(m) Continuing Disclosure Requirements.

The Borrower shall provide the State with any information needed to comply with paragraph (b)(5) of the Securities and Exchange Commission Rule 15c2-12, 17 C.F.R. 240.15c2-12 (the "SEC Rule"), with respect to State Bonds. In addition, if the Borrower becomes an "obligated person" within the meaning of the SEC Rule or an "Obligated Borrower" (as such term is defined by the State or the State Treasurer of the State of Oregon) for the State Bonds, the Borrower shall, in addition to the requirements of paragraphs (h) and (i) of Section 3.02 of this Loan Agreement, provide the following to the State upon request:

(i) any and all financial information or operating data that may reasonably be requested by the State to comply with the SEC Rule, and

(ii) audited financial statements, when and if prepared and available, prepared in accordance with generally accepted accounting principles as established by the Government Accounting Standards Board as in effect from time to time; provided, however, that if audited financial statements are not available, unaudited financial statements will be provided with audited financial statements to follow when and if available.

(n) Financial Statements; Reports. The Borrower shall deliver to the State in form and details satisfactory to the State:

(i) As soon as reasonably possible and in any event within ninety (90) days after the close of each fiscal year of the Borrower, unaudited statements of revenues, expenditures, cash flows, and changes in retained earnings for each of the funds constituting the Revenues for such period, all in comparative form and all in reasonable detail and certified by the chief financial officer of the Borrower, subject to year-end audit adjustments.

(ii) Such other statement or statements or reports as to the Borrower as the State may reasonably request.

(o) Contract Covenants.

The Borrower covenants and agrees to comply with the terms of the Contract including the covenants of the Borrower in Section 6 of the Contract.

(p) Further Assurances.

The Borrower shall, at the request of the State, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Agreement.

ARTICLE IV CONDITIONS PRECEDENT

SECTION 4.01. Loan Closing

The State's obligations hereunder are subject to satisfaction of the following conditions precedent on or prior to the Loan Closing Deadline or such later date as the State may authorize in writing in State's sole and absolute discretion.

(a) the Borrower will cause to be duly executed and delivered to the State (regardless of whether the Loan Agreement is assigned to the Trustee) the following items, each in form and substance satisfactory to State, its Counsel and Bond Counsel:

(i) this Loan Agreement duly executed and delivered by an Authorized Officer of the Borrower;

(ii) the Note duly executed and delivered by an Authorized Officer of the Borrower;

(iii) the Contract duly executed and delivered by an Authorized Officer of the Borrower;

(iv) copy of the ordinance or resolution of the governing body of the Borrower authorizing the execution and delivery of this Loan Agreement, the other Loan Documents, and the Borrower's Contract, certified by an Authorized Officer of the Borrower;

(v) an opinion of the Borrower's Counsel, acceptable to the State, substantially in the form set forth in Section 63 (a) of the Bond Indenture (such opinion or portions of such opinion may be given by one or more Counsel); provided, however, that the State and its Counsel or Bond Counsel may permit variances in the form of such opinion, if such variances are not to the material detriment of the interests of the holders of the State Bonds;

(vi) the documents required by Section 63 (a), (c), (d) and (f) (if applicable) of the Bond Indenture (regardless of whether the Loan Agreement is assigned to the Trustee) to the State; and

(vii) such other certificates, documents, opinions and information as the State, the Issuer, the Trustee, the Bond Counsel, or the Underwriter may reasonably require.

(b) There is money available in the Special Public Works Fund for the Project;

provided, however, the State shall be under no obligation to make this Loan if there has been a change in the Act so that the Project is no longer eligible for financial assistance authorized by this Loan Agreement.

SECTION 4.02. Conditions to Disbursements.

Notwithstanding anything in this Loan Agreement or any of the Loan Documents to the contrary, the State shall have no obligation to make any disbursement to the Borrower hereunder if:

(a) an Event of Default has occurred and is continuing under this Loan Agreement or any of the Loan Documents or the Bond Indenture or event, omission or failure of a condition which would constitute an Event of Default as defined in this Loan Agreement or any of the Loan Documents or the Bond Indenture after notice or lapse of time or both;

(b) The representations and warranties of the Borrower made in this Loan Agreement are not true and correct on the date of disbursement with the same effect as if made on such date;

(c) State has not received (i) a requisition executed by the Borrower in substantially the form of Exhibit E attached hereto and by this reference made a part hereof or has not received (ii) such other written evidence of materials and labor furnished to or performed upon the Project, itemized receipts or invoices for the payment of the same, and releases, satisfactions and other signed statements and forms as the State may require as a condition for making disbursement of the Loan. The State may, at its option, from time to time, either reimburse the Borrower for construction costs paid or may make direct payment for construction costs to suppliers, subcontractors and others for sums due them in connection with construction of the Project. Nothing herein contained shall require the State to pay any amounts for labor or materials unless satisfied that such claims are reasonable and that such labor and materials were actually expended and used in the construction of the Project. The State, at its option, from time to time, may also require that the Borrower

have a contractor or subcontractor execute and/or deliver a surety bond or indemnification in form and substance acceptable to the State for the faithful performance of the construction contract or subcontract and payment of all liens and lienable expenses in connection therewith in a sum equal to the contract or subcontract price. Disbursements for the Costs of the Project shall be subject to a retainage at the rate of five percent (5%) which will be released upon satisfactory completion of the Project; or

(d) Money is not available in the Special Public Works Fund to fund the disbursement.

Further, the State shall have no obligation to make any disbursement to the Borrower if, on or before the time for disbursement, there has been a change in the Act so that the Project is no longer eligible for financial assistance authorized by this Loan Agreement.

ARTICLE V ASSIGNMENT

SECTION 5.01. Assignment and Transfer by the State.

(a) The Borrower expressly acknowledges that, other than the right, title and interest of the State under Sections 2.08 and 6.04, all right, title and interest of the State in, to and under this Loan Agreement and the other Loan Documents either has been or may, at the sole discretion of the State, be assigned to the Trustee as security for the State Bonds as provided in the Bond Indenture, and that if any Event of Default shall occur and if this Loan Agreement and other Loan Documents have been assigned to the Trustee, the Trustee, pursuant to the Bond Indenture, shall be entitled to act hereunder in the place and stead of the State. The Borrower hereby consents to assignment of this Loan Agreement and the other Loan Documents to the Trustee for the State Bonds. The State acknowledges that the Borrower is not a party to the Bond Indenture and has no obligation to perform any of the State's covenants, agreements or obligations under the Bond Indenture or the State Bonds, and that the Borrower is only required to observe and perform its covenants, agreements and obligations under this Loan Agreement, the other Loan Documents, and the Contract and, if and when requested by the State, to cooperate with the State in order to enable the State to comply with the State's covenants, agreements or obligations under the Bond Indenture. This Loan Agreement and the other Loan Documents, including, without limitation, the right to receive payments required to be made by the Borrower hereunder and under the other Loan Documents and to compel or otherwise enforce observance and performance by the Borrower of its other duties, covenants, obligations and agreements hereunder and under the other Loan Documents, may be sold by the State to a third party or may be further transferred, assigned and reassigned in whole or in part to one or more assignees or subassignees by the Trustee at any time without the necessity of obtaining the consent of, but after giving prior written notice to, the Borrower.

In the event of the assignment of this Loan Agreement and the other Loan Documents to the Trustee, the State shall retain the right to compel or otherwise enforce observance and performance by the Borrower of its duties, covenants, obligations and agreements under Sections 3.01(f) and 3.02(d); provided, however, that in no event shall the State have the right to accelerate the outstanding balance payable pursuant to this Loan Agreement in connection with the enforcement of Sections 3.01(f) and 3.02(d).

(b) The Borrower hereby approves and consents to any assignment, sale or transfer of this Loan Agreement and the Loan Documents that the State deems to be necessary, including any assignment, sale or transfer in connection with any refunding of the State Bonds or the issuance of additional bonds under the Bond Indenture or otherwise in connection with any pooled loan program of the State.

SECTION 5.02. Assignment by Borrower.

This Loan Agreement and the other Loan Documents may not be assigned by the Borrower without the prior written consent of the State. The State may grant or withhold such consent in its sole discretion. In the event of an assignment of this Loan Agreement and the other Loan Documents by Borrower and assumption of the obligations hereunder, Borrower shall pay, or cause to be paid, to the State any fees or costs incurred by the State as the result of such assignment, including but not limited to, attorney fees of Bond Counsel or in-house Counsel.

ARTICLE VI DEFAULTS AND REMEDIES

SECTION 6.01. Event of Default.

If any of the following events occurs, it is hereby defined as and declared to be and to constitute an “Event of Default:”

(a) Failure by the Borrower to pay, or cause to be paid, on December 1 of any year any Loan Repayment required to be paid hereunder on such due date, except if the Borrower is a county and such failure is the result of nonappropriation of funds; or

(b) Failure by the Borrower to make, or cause to be made, any required payments of principal, redemption premium, if any, and interest on any bonds, notes or other obligations of the Borrower for borrowed money (other than the Loan), after giving effect to the applicable grace period; or

(c) Any representation made by or on behalf of the Borrower contained in this Loan Agreement or any other Loan Document, or in any agreement, instrument, certificate or document furnished in compliance with or with reference to this Loan Agreement, any other Loan Document or the Loan or in connection with the State Bonds, is false or misleading in any material respect; or

(d) A petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Borrower, such petition shall be dismissed within twenty (20) calendar days after such filing, and such dismissal shall be final and not subject to appeal; or the Borrower shall become insolvent or bankrupt or make an assignment for the benefit of its creditors; or a custodian (including, without limitation, a receiver, liquidator or trustee of the Borrower or any of its property) shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) calendar days; or

(e) Failure of the Borrower’s governing body to appropriate sufficient funds to fully fund all of the Borrower’s obligations to make Loan Repayments hereunder for any future fiscal period, except if the Borrower is a county and such failure is the result of nonappropriation of funds; or

(f) The occurrence of any event of default under Section 7 of the Contract; or

(g) Failure by the Borrower to observe and perform any duty, covenant, obligation or agreement (including that described in subsection (h) below) on its part to be observed or performed under this Loan Agreement or any other Loan Documents, other than as referred to in subsections (a) through (f) of this Section, which failure shall continue for a period of thirty (30) calendar days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the State or the Trustee, unless the State or the Trustee shall agree in writing to an extension of such time prior to its expiration; provided,

however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the State or the Trustee may not unreasonably withhold their consent to an extension of such time up to one hundred twenty (120) days from the delivery of the written notice referred to above if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Event of Default is corrected; or

(h) The Borrower fails to proceed expeditiously with, or to complete, the Project or any segment or phase of the Project in accordance with the plans and schedules approved by the State.

SECTION 6.02. Notice of Default.

The Borrower shall give the State and the Trustee (if this Loan Agreement and the other Loan Documents have been assigned to the Trustee) prompt telephonic notice of the occurrence of any Event of Default referred to in Section 6.01(d) hereof, and of the occurrence of any other event or condition that constitutes an Event of Default at such time as any senior administrative or financial officer of the Borrower becomes aware of the existence thereof. Any telephone notice pursuant to this Section 6.02 shall be confirmed in writing as soon as practicable by the Borrower.

SECTION 6.03. Remedies on Default.

Whenever an Event of Default referred to in Section 6.01 hereof shall have occurred and be continuing, the State shall have the right to take, or to direct the Trustee to take, any action permitted or required pursuant to the Loan Agreement or any other Loan Document or the Bond Indenture and to take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any duty, covenant, obligation or agreement of the Borrower hereunder, including without limitation, (a) declaring all Loan Repayments and all other amounts due hereunder and under the other Loan Documents (including, but not limited to the state's cost of defeasance of the portion of any State Bonds allocable to the Loan, if all or a portion of the principal of and interest on the Bonds has been accelerated pursuant to the Bond Indenture) to be immediately due and payable, and upon notice to the Borrower the same shall become due and payable without further notice or demand, (b) appointment of a receiver of the System, (c) refusal to disburse any Loan proceeds, (d) barring the Borrower from applying for future Special Public Works Fund assistance, or (e) withholding amounts otherwise due to the Borrower to apply to the payment of amounts due under this Loan Agreement as provided in ORS 285B.449.

SECTION 6.04. Attorney's Fees

If any suit or action arising out of or related to this Loan Agreement is brought by any party, the prevailing party or parties shall be entitled to recover the costs and fees (including without limitation reasonable attorney's fees, the fees and costs of experts and consultants, copying, courier, and telecommunication costs, and deposition costs and all other costs of discovery) incurred by such party or parties in such suit or action, including without limitation any post-trial or appellate proceeding, or in the collection or enforcement of any judgment or award entered or made in such suit or action; provided, however, that recovery from the State under this section is subject the limitations of the Oregon Constitution, Article XI, section 7, and other relevant statutes.

SECTION 6.05. Application of Moneys.

Any moneys collected by the State or the Trustee pursuant to Section 6.03 hereof shall be applied (a) first, to pay any attorney's fees, Trustee's fees, or other fees and expenses owed by the Borrower hereunder, (b) second, to pay interest due and payable on the Loan, (c) third, to pay principal due and payable on the

Loan, and (d) fourth, to pay any other amounts due and payable under this Loan Agreement or any of the Loan Documents.

SECTION 6.06. No Remedy Exclusive; Waiver; Notice.

No remedy herein conferred upon or reserved to the State or the Trustee is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or any of the Loan Documents or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. To entitle the State or the Trustee to exercise any remedy reserved to it in this Article VI, it shall not be necessary to give any notice, other than such notice as may be required in this Article VI.

SECTION 6.07. Retention of State's Rights.

Notwithstanding any assignment or transfer of this Loan Agreement and the Loan Documents pursuant to the provisions hereof or of the Bond Indenture, or anything else to the contrary contained herein, the State shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Borrower at law or in equity, as the State may, in its discretion, deem necessary to enforce the obligations of the Borrower to the State pursuant to Sections 2.02, 2.08, and 6.04 hereof.

SECTION 6.08. Default by the State.

In the event of any default by the State under any covenant, agreement or obligation of this Loan Agreement, the Borrower's remedy for such default shall be limited to injunction, special action, action for specific performance or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of the State hereunder as may be necessary or appropriate.

ARTICLE VII

MISCELLANEOUS

SECTION 7.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Borrower at the address specified on Exhibit C hereof and to the State, the Issuer and the Trustee at the following addresses:

(a) State:

Economic and Community Development Department
Attention: Manager, Northwest Team
One World Trade Center, Suite 250
121 SW Salmon Street
Portland, OR 97204

(b) Issuer:

State Treasurer
Attention: Manager, Debt Management Division
100 Labor & Industries Building
Salem, OR 97301

(c) Trustee:
BNY Western Trust Company
Attention: Corporate Trust Department
Two Union Square
601 Union Street, Suite 525
Seattle, WA 98101

Any of the foregoing parties may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent, by notice in writing given to the others.

SECTION 7.02. Binding Effect.

This Loan Agreement shall inure to the benefit of and shall be binding upon the State and the Borrower and their respective successors and assigns. In addition, the Trustee shall be considered as a beneficial party to this Loan Agreement, with all attendant rights to enforce the duties, obligations, covenants and agreements of the Borrower set forth herein, to the same extent as if the Trustee was a party hereto.

SECTION 7.03. Severability.

In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

SECTION 7.04. Amendments, Supplements and Modifications.

This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the State and the Borrower. This Loan Agreement may not be amended, supplemented or modified in a manner that is not in compliance with the Act and the Bond Indenture or so as to adversely affect the interest of the owners of the State Bonds.

SECTION 7.05. Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 7.06. No Construction against Drafter. Both parties acknowledge that they are each represented by and have sought the advice of Counsel in connection with this Loan Agreement and the transactions contemplated hereby and have read and understand the terms of this Loan Agreement. The terms of this Loan Agreement shall not be construed against either party as the drafter hereof.

SECTION 7.07. Applicable Law.

This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, including the Act. Any claim, action, suit or proceeding (collectively, "Claim") between the State (and/or any agency or department of the State of Oregon) and the Borrower that arises from or relates to this Loan Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

SECTION 7.08. Consents and Approvals.

Whenever the written consent or approval of the State shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the State unless otherwise provided by law or by rules, regulations or resolutions of the State or unless expressly delegated to the Trustee.

SECTION 7.09. Merger; No Waiver.

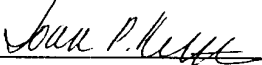
This Loan Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Loan Agreement. No waiver of any provision of this Loan Agreement or consent shall bind either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver or consent, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of the State to enforce any provision of this Loan Agreement shall not constitute a waiver by the State of that or any other provision.

IN WITNESS WHEREOF, the State and the Borrower have caused this Loan Agreement to be executed and delivered, effective as of the date first set forth above.

STATE OF OREGON

acting by and through its Economic and
Community Development Department

CITY OF TIGARD

By: 
Joan P. Rutledge, Manager
Northwest Team

By: _____
Craig Prosser
Finance Director

Date: 10/25/01

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/Michelle M. Teed (per email dated October 19, 2001)
Michelle M. Teed, Assistant Attorney General

Date: _____

AGENDA ITEM # _____
FOR AGENDA OF November 13, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Finalize Formation of Sanitary Sewer Reimbursement District No. 18, Established to Install Sewers in SW Walnut Street and 121st Avenue.

PREPARED BY: G. Berry DEPT HEAD OK A. Duenas CITY MGR OK W. Monahan

ISSUE BEFORE THE COUNCIL

Finalize the formation of Sanitary Sewer Reimbursement District No. 18, established to install sewers in SW Walnut Street and 121st Avenue.

STAFF RECOMMENDATION

Approve, by motion, the formation of Reimbursement District No. 18 as modified by the final City Engineer's Report.

INFORMATION SUMMARY

Council approved the formation of the Reimbursement District by Resolution No. 00-39 on June 27, 2000. Since then, construction of the improvements has been completed and final costs have been determined. City Council has also approved Resolution No. 01-46, establishing a Revised and Enhanced Neighborhood Sewer Reimbursement District Incentive Program. The attached City Engineer's Report has been revised accordingly.

OTHER ALTERNATIVES CONSIDERED

None

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Not applicable.

ATTACHMENT LIST

Resolution No. 00-39, Establishing Sanitary Sewer Reimbursement District No. 18
Exhibit A: Final City Engineer's Report
Exhibit B: District Map
Notice of Public Hearing with mailing list
Resolution No. 01-46, Neighborhood Sewer Reimbursement District Incentive Program

FISCAL NOTES

Total final cost of improvements including administrative fee: \$154,335.27. This is \$53,014.73 (26%) less than the estimated cost of \$207,350 reported in the preliminary City Engineer's Report. Each property owner's share of the public sewer line is \$6,430.64. Each owner's fair share would be limited to \$6,000 for connections completed within three years of City Council approval of the final City Engineer's Report in accordance with Resolution 01- 46

CITY OF TIGARD, OREGON

RESOLUTION NO. 00- 39

A RESOLUTION ESTABLISHING SANITARY SEWER REIMBURSEMENT
DISTRICT NO. 18

WHEREAS, on May 16, 1995, the voters of Washington County approved a Major Streets Transportation Improvement Program – Six Year Serial Levy for Roads (MSTIP3); and

WHEREAS, improvements to SW Walnut Street at the intersection with SW 121st Avenue is included in the MSTIP3; and

WHEREAS, the County is currently preparing to construct the improvements; and

WHEREAS, the City Council of Tigard desires to include the construction of certain City improvements in this County project and has entered into an Intergovernmental Agreement with Washington County to include the City improvements in the County project; and

WHEREAS, public sewers to serve residential lots along the project are among the proposed City improvements; and

WHEREAS, the City has initiated the Neighborhood Sewer Extension Program to extend public sewers and recover costs through Reimbursement Districts in accordance with TMC Chapter 13.09; and

WHEREAS, the sanitary sewer improvements for the proposed Reimbursement District are included in a Street Capital Improvement Project; and

WHEREAS, these property owners have been notified of a public hearing in accordance with TMC 13.09.060 and a public hearing was conducted in accordance with TMC 13.09.050; and

WHEREAS, the City Engineer has submitted a report describing the improvements, the area to be included in the Reimbursement District, the estimated costs, a method for spreading the cost among the parcels within the District, and a recommendation for an annual fee adjustment; and

WHEREAS, the City Council has determined that the formation of a Reimbursement District as recommended by the City Engineer is appropriate.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The City Engineer's report titled "Sanitary Sewer Reimbursement District No. 18", attached hereto as Exhibit A, is hereby approved.


SECTION 2: A Reimbursement District is hereby established in accordance with TMC Chapter 13.09. The District shall be the area shown and described on Exhibit B. The District shall be known as "Sanitary Sewer Reimbursement District No. 18."

SECTION 3 Payment of the reimbursement fee as shown in Exhibit A is a precondition of receiving City permits applicable to development of each parcel within the Reimbursement District as provided for in TMC 13.09.110.

SECTION 4 An annual fee adjustment, at a rate recommended by the Finance Director, shall be applied to the Reimbursement Fee.

SECTION 5 The City Recorder shall cause a copy of this resolution to be filed in the office of the County Recorder and shall mail a copy of this resolution to all affected property owners at their last known address, in accordance with TMC 13.09.090.

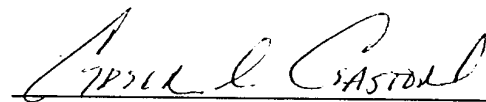
PASSED: This 27 day of June 2000.



~~Mayor - City of Tigard~~

Brian J. Moore, Council President

ATTEST:



~~City Recorder - City of Tigard~~

Greer A. Gaston, Deputy City Recorder

Exhibit A
City Engineer's Report
Sanitary Sewer Reimbursement District No. 18

Background

This district was established by City Council on June 27, 2000, through Resolution No. 00-39. Improvements were constructed and funded under the City of Tigard Neighborhood Sewer Extension Program (NSEP). Under the program the City of Tigard installs public sewers to each lot within a project area. At the time the property owner connects to the sewer, the owner would pay a connection fee of \$2,335.00 and reimburse the City for a fair share of the cost of the public sewer. There is no requirement to connect to the sewer or pay any fee until connection is made. In addition, property owners are responsible for disconnecting their existing septic system according to Washington County rules and for any other modifications necessary to connect to the public sewer.

The district was initiated by the City for the purpose of installing sewers as part of a Washington County street improvement project funded through the Major Streets Transportation Improvement Program (MSTIP). The sewers were installed by the County, along with other City improvements, with the City reimbursing the County for the cost of the City improvements through an Intergovernmental Agreement approved by Council also on June 27, 2000

Project Area - Zone of Benefit

Service was provided by connecting to existing sanitary sewer lines located in SW 121st Avenue south of the intersection of SW Walnut Street and SW 121st Avenue, and to the east and west in SW Walnut Street as shown on Exhibit Map B. Lines were extended approximately 500 feet along SW 121st Avenue and approximately 500 feet along SW Walnut Street to serve twenty-four properties.

Two properties in the area were not included in the district. 11770 SW Walnut Street was not included because the house is located in an area south of SW Walnut Street that is too low to be served by the sewer. The other property is 12225 SW Walnut Street at the northwest corner of SW 122nd Avenue. This lot is without a house and does not meet the minimum lot size for the designated zoning.

Cost

The final cost for the sanitary sewer construction is \$135,978.21. Engineering and inspection fees amount to \$18,375.06 (13.5%) as defined in TMC 13.09.040(1). The total project cost including these fees is \$154,335.27. This

entire amount should be reimbursed to the NSEP fund as properties connect to the sewer and pay their fair share of the total amount.

In addition to sharing the cost of the public sewer line, each property owner will be required to pay an additional \$2,335 connection and inspection fee when connection to the public line is made, and will be responsible for all plumbing costs required for work done on private property.

Reimbursement Rate

All properties in this area are zoned R-4.5 and have dissimilar lot sizes as can be seen in Exhibit Map B. However, each property currently is improved with one house and further partitioning for additional houses is likely to require construction of additional sewers. Therefore, it is recommended that the total cost of the project be divided equally among the twenty-four properties included in the reimbursement district. Resolution 01-46 limits this fee to \$6,000 to the extent that it does not exceed \$15,000 per owner for connections completed within three years of final approval of the City Engineer's Report.

Other reimbursement methods include basing the proportional share upon the square footage of each property or by the length of frontage of each property. These methods are not recommended because there is no correlation between these methods and the cost of providing service to each lot or the benefit to each lot.

Each property owner's fair share of the public sewer line is \$6,430.64. Each owner's fair share would be limited to \$6,000 to the extent that it does not exceed \$15,000, for connections completed within three years of City Council approval of the final City Engineer's Report following construction in accordance with Resolution 01-46 (attached). In addition to paying for the first \$6,000, owners will remain responsible for paying all actual costs that exceed \$15,000.

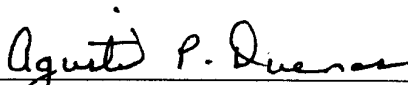
Annual Fee Adjustment

TMC 13.09.115 states that an annual percentage rate shall be applied to each property owner's fair share of the sewer line costs on the anniversary date of the reimbursement agreement. The Finance Director has set the annual interest rate at 6.05% as stated in City of Tigard Resolution No. 98-22.

Recommendation

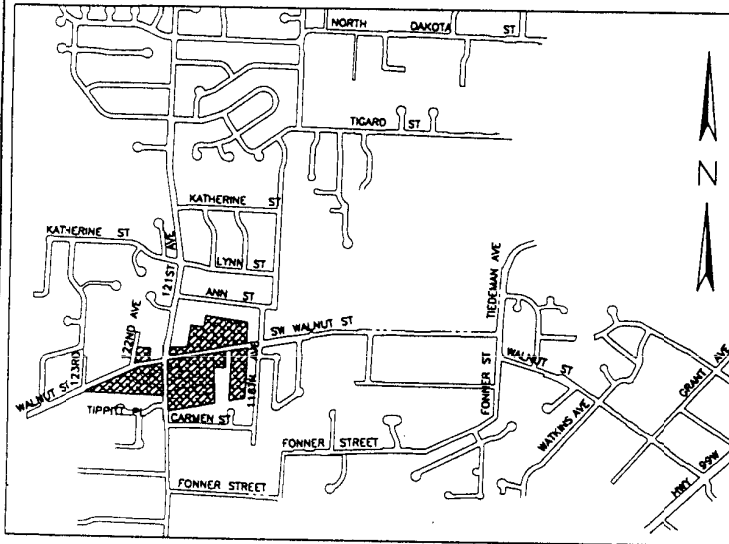
It is recommended that a reimbursement district be formed with an annual fee increase as indicated above and that the reimbursement district continue for fifteen years as provided in the Tigard Municipal Code (TMC) 13.09.110(5). Fifteen years after the formation of the reimbursement district, properties connecting to the sewer would no longer be required to pay the reimbursement fee.

Submitted October 30, 2001



Agustin P. Duenas PE
City Engineer

SECTION 3 T2S R1W W.M.
CITY OF TIGARD, OREGON



Vicinity Map
Not to Scale

LEGAL DESCRIPTION:

TAX LOT 2S1038A00500	TAX LOT 2S1038D00200
TAX LOT 2S1038A00600	TAX LOT 2S1038D00300
TAX LOT 2S1038A00700	TAX LOT 2S1038D00400
TAX LOT 2S1038A00800	TAX LOT 2S1038D00602
TAX LOT 2S1038A01001	TAX LOT 2S1038D00600
TAX LOT 2S1038A01003	TAX LOT 2S1038D00700
TAX LOT 2S1038B07000	TAX LOT 2S1038D00800
TAX LOT 2S1038C00100	TAX LOT 2S1038D00901
TAX LOT 2S1038C00200	TAX LOT 2S1038D01001
TAX LOT 2S1038C00300	TAX LOT 2S1038D01200
TAX LOT 2S1038C00400	TAX LOT 2S1038D01300
TAX LOT 2S1038C00600	
TAX LOT 2S1038C00700	



PROPERTIES INCLUDED IN
REIMBURSEMENT DISTRICT



EXISTING SANITARY SEWER



PROPOSED SANITARY SEWER

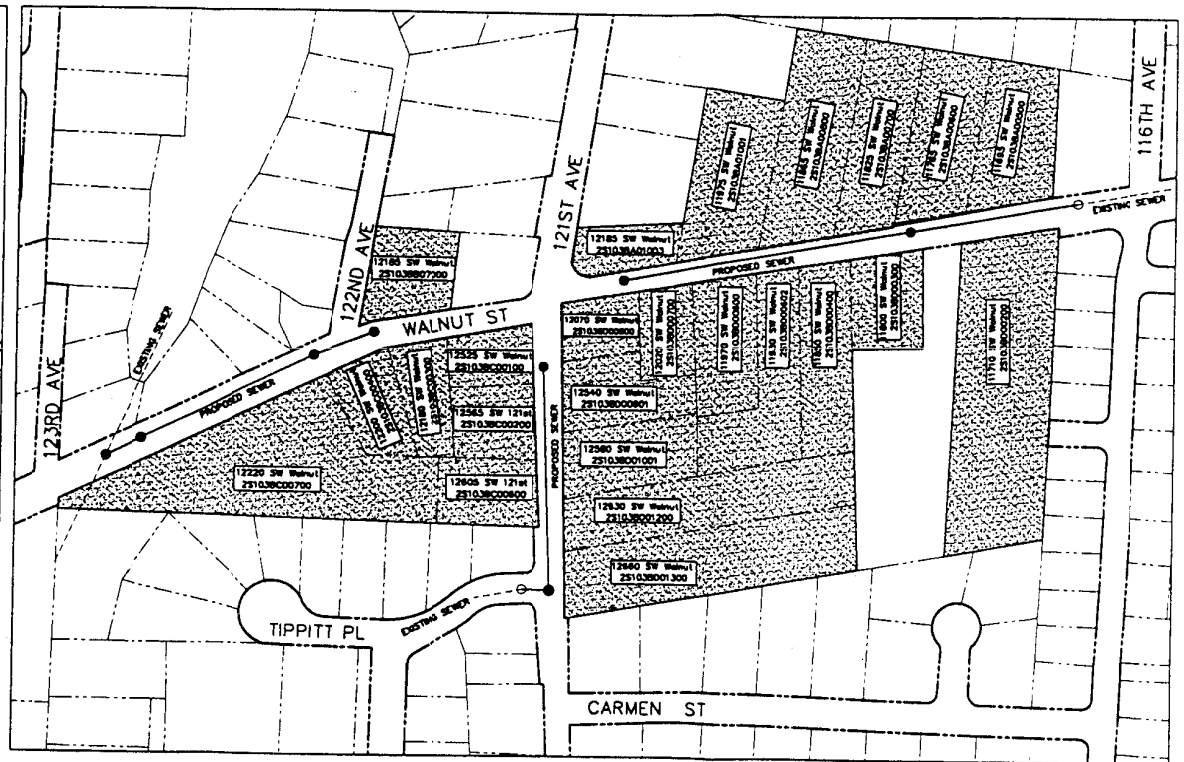


Exhibit "B"

Scale 1"=200'

NOTE: ALL PROPERTIES IN THE REIMBURSEMENT DISTRICT
ARE ZONED R4.5



CITY OF TIGARD
OREGON

WALNUT & 121ST
SANITARY SEWER EXTENSION
REIMBURSEMENT DISTRICT #18

ENGINEERING DEPARTMENT

FILE NO.

DWG NAME

SHEET

October 22, 2001



Notice of Public Hearing

Tuesday, November 13, 2001 – 7:30 PM

Tigard Civic Center - Town Hall

The Tigard City Council will consider the following on November 13, 2001, at 7:30 PM, at the Tigard Civic Center - Town Hall, 13125 SW Hall Blvd., Tigard, Oregon. Both public oral and written testimony is invited. The public hearing on this matter will be conducted as required by Section 13.09.105 of the Tigard Municipal Code. Further information may be obtained from the Engineering Department at 13125 SW Hall Blvd., Tigard, Oregon 97223, or by calling 639-4171.

INFORMATIONAL PUBLIC HEARING:

FINALIZATION OF SANITARY SEWER REIMBURSEMENT DISTRICT NO. 18 (SW Walnut & SW 121st Avenue). The Tigard City Council will conduct a public hearing to hear testimony on the finalization of Sanitary Sewer Reimbursement District 18 formed to install a sewer along SW Walnut Street and SW 121st Avenue.

Each property owner's recommended fair share of the public sewer line is \$6,431. Each owner's fair share would be limited to \$6,000 for connections completed within three years of City Council approval of the final City Engineer's Report following construction in accordance with Resolution 00-39.

If you have questions, please call Greg Berry of the Engineering Department 503-639-4171 extension 373.

\\eng\2000-2001 fy cip\walnut - 121st\reimbursement district public hearing final.doc

2S103BD-00900

ALLEN ELIZABETH A & STEVEN P
12540 SW 121ST AVE
TIGARD, OR 97223

2S103BD-00901

ALLEN STEVEN P & ELIZABETH A
12540 SW 121ST AVE
TIGARD, OR 97223

2S103BA-01001

ANDERSON EDWARD L &
ANDERSON MARY ANNE
PO BOX 1081
ST HELENS, OR 97051

2S103BD-01300

BERGQUIST R KELLY
MERRILL M
12660 SW 121ST
TIGARD, OR 97223

2S103BB-07000

BOLEN RICHARD L
12185 SW WALNUT ST
TIGARD, OR 97223

2S103BA-00800

BOOTH DAVID & MARY P
11865 SW WALNUT ST
TIGARD, OR 97223

2S103BD-00400

BRAK EDITH A
823 S JUNIPER DR
MOSES LAKE, WA 98837

2S103BD-00200

CAPPOEN RAYMOND J
SUZANNE
11710 SW WALNUT ST
TIGARD, OR 97223

2S103BC-00300

FLEWELLYN WILLIAM D & SUANNE E
12180 SW WALNUT ST
TIGARD, OR 97223

2S103BA-00600

GAARDE RICHARD J & DOROTHY A TR
270 NW 88TH AVE
PORTLAND, OR 97229

2S103BA-00700

GAARDE RICHARD J II AND
JUDITH O
11825 SW WALNUT
TIGARD, OR 97223

2S103BD-01001

HUGHES JACK D TR &
HUGHES LEONE M TR
12580 SW 121ST AVE
TIGARD, OR 97223

2S103BD-00600

JOHNSON DONALD R & CYNTHIA D
11970 SW WALNUT ST
TIGARD, OR 97223

2S103BC-00700

MASON JON D & KARI G
12220 SW WALNUT ST
TIGARD, OR 97223

2S103BD-01200

NIX LOY CARL MARSHA A
12630 SW 121ST
TIGARD, OR 97223

2S103BD-00602

NORMAN JACK J JR AND
MARY J
11930 SW WALNUT
TIGARD, OR 97223

2S103BA-00500

ROGERS KATHERN J TRUST
BY KATHERN J & DAVID K ROGERS CO-T
11695 SW WALNUT ST
TIGARD, OR 97223

2S103BD-00700

SCHIVLEY ROBERT L JR &
JULIE A
12020 SW WALNUT ST
PORTLAND, OR 97223

2S103BC-00600

STEVENS JAMES H AND LYNN N
12605 SW 121ST
TIGARD, OR 97223

2S103BC-00200

VRVILO WANDA I
12565 SW 121ST
TIGARD, OR 97223

2S103BD-00603

WASHINGTON COUNTY
DEPT OF LAND USE & TRANSPORTATION
CPM DIV-RIGHT OF WAY SECTION
1400 SW WALNUT ST MS #18
HILLSBORO, OR 97123

2S103BA-01004

WASHINGTON COUNTY
DEPT OF LAND USE & TRANSPORTATION
CPM DIV-RIGHT OF WAY SECTION
1400 SW WALNUT ST MS #18
HILLSBORO, OR 97123

2S103BC-00100

WASHINGTON COUNTY
BY LUT CPM DIVISION RIGHT-OF-WAY
1400 SW WALNUT ST MS18
HILLSBORO, OR 97123

2S103BA-01003

WASHINGTON COUNTY
BY LUT CPM DIVISION RIGHT-OF-WAY
1400 SW WALNUT ST MS18
HILLSBORO, OR 97123

2S103BC-00400

WIGGINS HAL C &
WIGGINS JOANNE A
12200 SW WALNUT ST
TIGARD, OR 97223

2S103BD-00800

WOOD ROLAND R
12070 SW WALNUT
TIGARD, OR 97223

2S103BD-00300

WRIGHT LARRY A & MAUREEN L
11800 SW WALNUT ST
TIGARD, OR 97223

CITY OF TIGARD, OREGON

RESOLUTION NO. 01-46

A RESOLUTION REPEALING RESOLUTION NO. 98-51 AND ESTABLISHING A REVISED AND ENHANCED NEIGHBORHOOD SEWER REIMBURSEMENT DISTRICT INCENTIVE PROGRAM

WHEREAS, the City Council has initiated the Neighborhood Sewer Extension Program to extend public sewers through Reimbursement Districts in accordance with TMC Chapter 13.09; and

WHEREAS, on October 13, 1998, the City Council established The Neighborhood Sewer Reimbursement District Incentive Program through Resolution No. 98-51 to encourage owners to connect to public sewer. The program was offered for a two-year period after which the program would be evaluated for continuation; and

WHEREAS, on September 26, 2000, the City Council extended The Neighborhood Sewer Reimbursement District Incentive Program an additional two years through Resolution No. 00-60; and

WHEREAS, City Council finds that residential areas that remain without sewer service should be provided with service within five years; and

WHEREAS, Council has directed that additional incentives should be made available to encourage owners to promptly connect to sewers once service is available and that owners who have paid for service provided by previously established districts of the Neighborhood Sewer Extension Program should receive the benefits of the additional incentives.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: Resolution No. 98-51 establishing the Neighborhood Sewer Reimbursement District Incentive Program is hereby repealed.

SECTION 2: A revised incentive program is hereby established for the Neighborhood Sewer Extension Program. This incentive program shall apply to sewer connections provided through the sewer reimbursement districts shown on the attached Table 1 or established thereafter. All connections qualifying under this program must be completed within **three years** after Council approval of the final City Engineer's Report following a public hearing conducted in accordance with TMC Section 13.09.105 or by **two years** from the date this resolution is passed, which ever is later, as shown on the attached Table 1.

SECTION 3: To the extent that the reimbursement fee determined in accordance with Section 13.09.040 does not exceed \$15,000, the amount to be reimbursed by an owner of a lot zoned single family residential shall not exceed \$6,000 per connection, provided that the lot owner complies with the provisions of Section 2. Any amount over \$15,000 shall be reimbursed by the owner. This applies only to the reimbursement fee for the sewer installation and not to the connection fee, which is still payable upon application for

sewer connection.

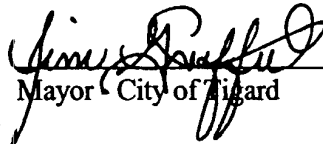
SECTION 4: The City Engineer's Report required by TMC Chapter 13.09 shall apply the provisions of this incentive program. Residential lot owners who do not connect to sewer in accordance with Section 2 shall pay the full reimbursement amount as determined by the final City Engineer's Report.

SECTION 5: Any person who has paid a reimbursement fee in excess of the fee required herein is entitled to reimbursement from the City. The amounts to be reimbursed and the persons to be paid shall be determined by the Finance Director and approved by the City Manager. There shall be a full explanation of any circumstances that require payment to any person who is not an original payer. The Finance Director shall make payment to all persons entitled to the refund no later than August 31, 2001.

SECTION 6: The Sanitary Sewer Fund, which is the funding source for the Neighborhood Sewer Reimbursement District Program, shall provide the funding for the installation costs over \$6,000 up to a maximum of \$15,000 per connection.

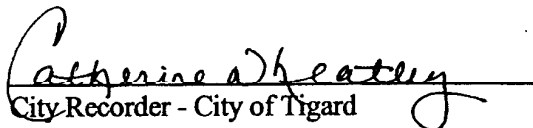
EFFECTIVE DATE: July 10, 2001

PASSED: This 10th day of July 2001.



Mayor City of Tigard

ATTEST:



City Recorder - City of Tigard

I:\Citywide\Res\Resolution Revising the Neighborhood Sewer Incentive Program

Appendix B

The 1995 Update of the Sewer Master Plan recommends that the City immediately construct \$851,000 of improvements with the amount increasing to \$944,000 with build-out. However, following review of the plan, the following is recommended.

Bonita Trunk (D-12) - The plan identified three lines between consecutive manholes that are without adequate capacity. However, following 0.12 inch of rainfall, inspection revealed that only a very small portion of the capacity of these lines was being used. Moreover, this is in a generally developed area so significantly greater flows in the future are not expected.

Durham Rd. Lateral (D-15) - This line is only a concern if it is in an area with basements. Generally, there are no service connections this line so no further action is recommended.

East Tigard Trunk (D-11) - This is the line that runs along Redrock Creek serving the Triangle and recently improved at the railroad crossing. Again, the concern here is basements and there are none. Moreover, recent development in the Triangle has been of a type that is expected to generate only demands on the sewer.

Katherine St. Lateral (D-9) - This 12-inch line was identified as one requiring further investigation. It serves a developing portion of the Walnut Island. USA installed a flow monitoring station from November 20, 1998 through December 22, 1998 to record wet weather flows. Peak rainfall of 2.18 inches occurred on November 25, 1998 resulting in less than 3 inches of peak flow in the pipe. Consequently, replacement of the line will not be further considered.

Summerfield Trunk (D-14) - Following field inspection of the depth of flow following rainfall, USA staff was requested to reevaluate this line and found that this line was erroneously shown as a deficient line. No further action is proposed.

Appendix C Residential Area Projects

AREA	LOTS	EST. PRICE PER/LOT	EST. TOTAL
FY-2001-2002			
FERN STREET	7	\$5,829	\$40,800
CARMEN STREET	6	\$6,000	\$36,000
ASH AVENUE	11	\$6,000	\$66,000
HOWARD DRIVE	48	\$6,513	\$312,600
93RD AVENUE	33	\$7,176	\$236,800
WATKINS AVENUE	12	\$9,800	\$117,600
** DERRY DELL	20	\$7,200	\$144,000
		TOTAL:	\$1,085,800
FY-2002-2003			
HOODVIEW DR *	27	\$9,385	\$253,400
OMARA ST / CHELSEA LOOP	7	\$9,429	\$66,000
DARMEL COURT	4	\$2,850	\$11,400
MURDOCK STREET	9	\$5,600	\$50,400
98TH AVE	27	\$7,315	\$197,500
ERROL / FONNER	33	\$8,000	\$264,000
ALBERTA / JAMES / MARION ST	29	\$10,103	\$293,000
		TOTAL:	\$1,135,700
FY-2003-2004			
MARILYN COURT	6	\$10,400	\$62,400
FAIRHAVEN STREET	19	\$10,421	\$198,000
100TH AVE	21	\$10,690	\$224,500
CHERRY STREET *	25	\$11,120	\$278,000
97TH AVE / 100TH AVE	21	\$11,676	\$245,200
HILLVIEW STREET	6	\$12,300	\$73,800
		TOTAL:	\$1,081,900
FY-2004-2005			
MURDOCK ST / 100TH AVE	33	\$6,727	\$222,000
121ST AVENUE	73	\$7,068	\$516,000
112TH / WALNUT	34	\$10,071	\$342,400
OMARA STREET	14	\$13,929	\$195,000
		TOTAL:	\$1,275,400
FY-2005-2006			
117TH AVENUE	7	\$7,543	\$52,800
OMARA ST / MCDONALD ST	34	\$7,647	\$260,000
* EDGEWOOD STREET	32	\$8,063	\$258,000
VARNS STREET *	27	\$13,104	\$353,800
ANN STREET	6	\$14,000	\$84,000
87TH AVE	6	\$14,233	\$85,400
110TH AVE	3	\$14,800	\$44,400
115TH AVE	3	\$18,000	\$54,000
MCDONALD ST. SWR	0	\$67,200	\$67,200
		TOTAL:	\$1,259,600
GRAND TOTAL:	659		
MIXED USE AREA			
TRIANGLE AREA	79	\$9,266	\$732,000
* REQUIRES OMARA STREET		GRAND TOTAL:	\$6,570,400
** REQUIRES WATKINS AVE			
Project locations shown on Map 2			

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Fanno Creek Trail Update

PREPARED BY: Duane Roberts DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

This is an informational item. No Council action is requested.

STAFF RECOMMENDATION

Not applicable

INFORMATION SUMMARY

The purpose of this agenda item is to update Council on 1) the development status of the Fanno Creek Trail within Tigard and 2) provide an opportunity for the Fanno Creek Trail Working Group to share a vision, potential, and benefits of the Fanno Creek Trail (Attachment 1).

The Fanno Creek Trail Working Group was established by Metro some two years ago and consists of representatives of approximately fourteen different organizations and jurisdictions, including Tigard. Bob Bothman, a former ODOT Director, is chair of the group. He will be present at the meeting to show and discuss a powerpoint presentation prepared by the Working Group and a consultant. An Oregonian story on Mr. Bothman and his involvement in promoting the Fanno Creek Trail is attached (Attachment 4). Following this big picture presentation, staff will show additional slides and provide an update on the status of the Tigard portion of the trail. A map and memo on the regional trail and the local section is attached.

OTHER ALTERNATIVES CONSIDERED

Not applicable

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Comprehensive Plan Policy 3.5.3 states that "The City Shall Provide an Interconnected Pedestrian/Bikepath Throughout the City."

ATTACHMENT LIST

- # 1 Memo to City Council from Jim Hendryx, dated October 30, 2001
- # 2 Map - Fanno Creek Greenway Trail, Metro
- # 3 Fanno Creek Trail Status, City of Tigard
- # 4 "Hike with Shaper of Fanno Creek Trail", Oregonian, Aug. 24, 2000

FISCAL NOTES

The cost of completing the remaining Tigard pieces of the Fanno Creek Trail is estimated at \$1.5 million.

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MEMORANDUM

CITY OF TIGARD

TO: City Council

FROM: Jim Hendryx

DATE: 10/30/01

SUBJECT: Fanno Creek Trail Update

Introduction

This memo provides a progress report on the Fanno Creek Greenway Trail. It is intended as briefing material for the November 13th Council agenda item. The memo includes:

- A) highlights the regional efforts underway to promote and advance the regional trail; and
- B) a status report on the Tigard portion of the Fanno Creek Trail, along with a brief survey of the main issues and constraints related to its future completion.

A) Summary of Regional Efforts to Promote the Fanno Creek Regional Trail

The Fanno Creek Regional Trail is defined conceptually as linking Willamette Park on the Willamette River in downtown Portland with the confluence of the Tualatin River and Fanno Creek in Durham (Attachment 2).

Metro has taken an active role in the promotion of the Fanno Creek Regional Trail:

1. Fanno Trail Working Group

The purpose of the Working Group is to share information, raise public awareness, create a uniform identify for the trail, and find ways to fund and complete its design and construction. This group has been meeting for some two years. Its members include non-profit organizations and representatives of the multiple jurisdictions (Metro, Portland, Beaverton, THPRD, Tigard, and Durham) located along the length of Fanno Creek. Bob

Bothman, chairman of the THPRD Recreational Trails Advisory Committee and a former Director of the Oregon Department of Transportation, is chair.

So far, the group has undertaken a number of projects:

- ◆ The **Abassador Program** is an outreach to community groups and includes a powerpoint presentation on the Fanno story put together by the Group and a consultant.
- ◆ The Fanno Creek **brochure** is proposed to include a vision statement, map, contact information for the various jurisdictions, a summary of all trail planning projects, and other pertinent information.
- ◆ A **feasibility study and action plan** to complete the missing sections of the regional trail is another Group project. The study will address environmental requirements, final alignments, location of trailheads, determination of needed land, estimated costs of trail construction, and coordinated funding plans. The study also will look at design standards, standardized signage and bollards, and interpretive signs. In Tigard, an additional work task will include looking at both a rails-with-trails and a greenway corridor alignment within the Bonita-Durham and Durham-Tualatin River segments of the trail. The study RFP is scheduled to be finalized in November 2001. The start date of the study is early 2002.

It should be noted that Tigard is a partner in the funding of this study, contributing a pro-rated amount of \$5,000 toward the cost of hiring the consultant. This amount is included in the current-year park CIP budget. Metro is providing staff time as project manager for the study.

2. **Metro Acquisition Activities**

In addition to creating the Fanno Creek Working Group, Metro also is committed to buying appropriate land and trail easements along the corridor. So far, Metro has purchased two such properties in Tigard, containing a combined 2,000 lineal feet of future trail right-of-way:

- seven-acre Woodard Park Expansion; and
- thirteen-acre Brown/McDonald properties.

3. **Metro Green Ribbon Committee**

The Metro Green Ribbon Committee was formed by Metro Council in mid-2001 to identify eight to ten priority Greenspaces sites to be improved and opened to the general public. Another part of the Committee's assignment is to identify funding for the improvements. As of October 2001, the Fanno Creek Trail was on the short list of candidate projects being considered by the Committee. Before the first cut was made, Mayor Griffith submitted a letter in support of including the Fanno Creek Trail as a Green Ribbon project. The final list of eight to ten priority sites is scheduled to be completed in December, 2001.

B) Tigard Portion of the Fanno Creek Trail

1. Historical Background

- ◆ The idea of a Fanno stream front trail appears to have originated in the early 1970s with the adoption of the Tigard Area Comprehensive Pedestrian-Bicycle Pathway Plan. This plan shows a trail following the Fanno Creek Greenway and extending from Tigard's northern City limits to the confluence with the Tualatin River.
- ◆ In 1983, the greenway trail was incorporated into the Comprehensive Plan and defined conceptually as following Fanno Creek.
- ◆ Over the years, the City has been working steadily to make the concept of an uninterrupted trail a reality. Various links have been constructed by private development conditioned by the City and by the City itself. When these various links are tied together and the trail extended, an important high use trail system with high values for recreation will be in place.
- ◆ The 1998 Tigard Parks Master Plan survey found trails to be the number one facility improvement priority of local residents.
- ◆ Greenways and trails were rated as the highest park improvement priorities in the "Tigard Beyond Tomorrow" opinion poll conducted in 2000.
- ◆ The Washington Square Regional Center Loop Trail (Washington Square Greenbelt) is identified in the Washington Square Regional Center Plan. It is proposed to encircle the Regional Center. The Greenway Trail is mentioned here because the trail alignment is proposed to interconnect with and extend along the existing Fanno Creek Trail between North Dakota Street in Tigard and Cirrus Drive in Beaverton. According to the Washington Square Regional Center Plan, "a continuous trail system would provide access and links to residential, employment, and commercial districts and provide pedestrian and bicycle connectivity between destinations in the area". In March 2002, the Metro Council will consider adding the loop trail to the Regional Trail System.

The attached map (Attachment 3) shows the development status of the trail corridor, by segment, between the northern and southern City limits.

2. Overview of Development Status of Tigard Portion of the Trail

Approximately forty per cent of the Fanno Creek Greenway Trail within Tigard has been completed to date. The incomplete sections are primarily located in the southern portion of the trail alignment (Hall Boulevard to the Tualatin River). The overall cost of completing the remaining pieces of the trail is estimated at \$1.5 million.

The following are the major obstacles and challenges in completing the Tigard portion of the Fanno Trail:

- ◆ **Lack of Funding**
The main issue relating to the completion of the missing segments is lack of funding. Beyond the local Greenspaces monies designated for trail activities this year, little future City funding has been identified for advancing the trail.

- ◆ Private Ownership – Fragmented
Other important issues include continued reliance on the willing seller policy to acquire privately owned right-of-way, the prioritization and phasing of trail segments, and the feasibility of alternative rails-with-trails routes (specifically between Bonita-Durham and Durham-Tualatin River) if stream-based routes are not capable of being built.
- ◆ Natural Constraints
The Fanno Creek greenway corridor contains a broad range of vegetation, including brush, meadow, and forest. It also contains most of the City's high quality wetlands. This contributes to the trail's scenic values. At the same time, the wetlands create potential conflicts between the extension of the trail and policies and standards for wetland protection.

Exhibit "A" provides a detailed description of development status of the Tigard portion of the Fanno Creek Trail.

Exhibit “A”

The development status of the Tigard Fanno Creek Trail, by segment, is described below. The numbering system corresponds with assigned engineering project numbers. The trail segments located upstream of segment 1 were built in stages during the 1980's as developed occurred.

TRAIL SEGMENTS

Segment 1

Location: North Dakota to Tigard Street

Completion level: Complete

This section was constructed in two phases, one in 1989 and the other in 1998.

Construction constraints: N/A

Fowler School, Segment 2

Location: Tigard Street to Tiedeman

Completion level: Complete

Construction of the 1,800-foot Tigard to Tiedeman segment of the Fanno Creek Trail, which runs along the eastern edge of the Fowler School campus, was completed and opened to the public in early November 2000. The project included a pedestrian bridge over Summer Creek. The width of the trail was narrowed to 8 feet throughout its length, from the regional design standard of 10 feet, in order to reduce the trail's impact to wetlands and vegetation. A companion, on-site mitigation project, intended to compensate for the unavoidable impact of this segment on 0.35 acres of wetlands, was completed in late-November 2000. The mitigation plan consisted of planting trees and shrubs on 1.2 acres of land between the creek and path.

Construction constraints: N/A

Tiedeman/Woodard Park, Segment 3

Location: Tiedeman Ave. to downstream edge of Woodard Park

Completion level: Complete

This 1,500 lineal foot segment of ten-foot wide trail was completed in October of this year. It was partially financed by a \$50,000 Recreational Trail Program grant. The RTP is a federal-aid program to help states provide and maintain recreational trails for both motorized and non-motorized trail use. Oregon Parks and Recreation Department administers the RTP in Oregon. Metro Local Share Greenspaces Funds were used to meet construction costs not covered by the grant award. The Engineering Department provided project design and construction management.

Construction constraints: N/A

Woodard Park/Grant Avenue, Segment 4

Location: Downstream edge of Woodard Park to Grant Avenue.

Completion level: Not complete

Construction constraints: Construction constraints include lack of right-of-way, fragmented ownership, wetlands, and the high cost of a pedestrian bridge crossing. No portion of the segment has been installed.

In December 2000, the Hearings Officer approved the development of an adult care facility on the second of the three parcels located within the proposed trail corridor. This parcel borders Fanno Creek's west bank and is located downstream of Tigard Industrial Park. The development approval conditions require the dedication of an easement for the creekside trail. The developer has up to 18 months to start the project. A building permit will not be issued until all approval conditions are met.

The new owner of the third parcel located within the Woodard Park/Grant alignment is highly supportive of the trail project and is willing to sell the needed portion of his property at market value. Greenspaces local share funds are budgeted to complete the acquisition. However, this piece is landlocked and, under state law, cannot be sold until access via one of the two adjoining parcels is obtained.

Segment 5

Location: Grant Avenue to Main Street

Completion level: Partially complete

Construction constraints: Construction constraints include completion of right-of-way acquisition. The mid or Morlan Plumbing section of the trail is completed.

The City owns the proposed trail right-of-way between Grant Avenue and the Johnson Street Apartments. The estimated cost of constructing this segment from Grant to the downstream edge of this property is \$85,000. Because it is less than one-third the cost and connects to the downtown area, this segment is seen as a much higher priority than the upstream Woodard Park-Grant segment.

The completed Morlan Plumbing trail is located downstream of the Johnson Street Apartments. The Morlan company installed the trail through the streamfront portion of its property in 1990. This trail is 8-feet wide and is constructed of concrete. The section is fenced off at both ends by six-foot high chain link fence. The present plan for dealing with the fence is that the City, when the time comes, will send a letter to Morlan advising that the fence will be opened when the trail is constructed.

The proposed construction of the remaining portion of Segment 5 would include the upgrading of the Pacific Highway undercrossing portion of the trail, with the installation of vandal resistant lighting, and include the improvement of the existing trail from the Morlan Plumbing south property line to Main Street.

Segment 6

Location: Main Street to Ash Avenue

Completion level: Complete

This long-planned 600-foot segment, including a pedestrian bridge over Fanno Creek, was completed and open to the public in October 2000. It connects with the existing Fanno Creek Park trail, which extends to Hall Boulevard. The portion of the trail located on the east bank of the stream is constructed of boardwalk, with a middle section of asphalt.

Construction constraints: N/A

Hall to Bonita Segment, Segment 7

Location: The upstream terminus of this segment is Hall Boulevard. The downstream terminus is Bonita Road.

Completion level: Not complete.

Construction constraints: The main construction constraints include lack of right-of-way and extensive wetlands and natural areas along the preferred route.

This section is largely uncompleted, although a 1,600 foot sidewalk along Milton Court connecting to Bonita Road could serve as the route for the lower portion of the trail.

Within this corridor, approximately 1,000 feet of continuous pedestrian trail is in place on the west side of Fanno Creek between the Fanno Creek Apartments and Fanno Creek Drive. However, according to a 1997 consultant study, which mapped the route of this and other undeveloped segments, because of significant wetland conflicts, the preferred route of the main stem trail runs along the western side of Fanno Creek through undeveloped property. Exclusive of land acquisition and neighborhood connections, a partially updated cost estimate of this segment is \$375,000.

In May 2000, Metro transferred to Tigard management responsibility for the 13-acre Brown/McDonald property. Located along the downstream edge of the land referred to above, this property was acquired by Metro using regional Greenspaces funds. Fanno Creek flows through most of the 1,600-foot length of the property. Among other potential passive recreational uses, the land will provide right-of-way for the future extension of the Fanno Creek trail. The parcel connects with City-owned greenway that extends along the creek to Bonita Road.

Segment 8

Location: Bonita Road to Durham Road

Completion level: Not complete

Construction constraints: Construction constraints include multiple ownerships and environmental constraints. No engineering design or construction work has occurred.

According to the 1997 trail route study, the preferred route of this segment is located along the west side of Fanno Creek for a short distance before crossing over to the east side. The undeveloped greenway corridor on this side, located along the back of industrial properties fronting on 74th Avenue, is narrower here than anywhere else in the Fanno Creek corridor.

The estimated cost of this segment, exclusive of right-of-way acquisition and neighborhood connections, is \$460,000. According to a survey conducted four years ago, more than half of the owners of property within this corridor are not receptive to the idea of the dedication or sale of the needed right-of-way. If needed, the nearby rail corridor or a sidewalk along 76th could provide a feasible alternative route.

Segment 9

Location: Durham Road to the Tualatin River

Completion level: Not complete

Construction constraints: No work of any kind, design, acquisition, or construction, has been done on this segment. Recently, the developer of commercial property bordering Fanno Creek was conditioned to provide a trail easement. CWS and the City of Durham own most of the remaining land located on either of the creek.

This segment has not been formally studied as yet. A preliminary engineering study of the feasibility of streamside and rails-with-trails routes will be included in the Metro study mentioned below. The USA treatment plant and the wetlands along the route appear to severely limit options for a creekside route. Another potential constraint is that, in the past, City of Durham residents have not been supportive of the regional trail. Should this segment not be buildable for one or more reasons, Durham Road and the recently completed 85th Avenue/Cook park trail would provide an alternate route for trail users wishing to reach the Tualatin River.

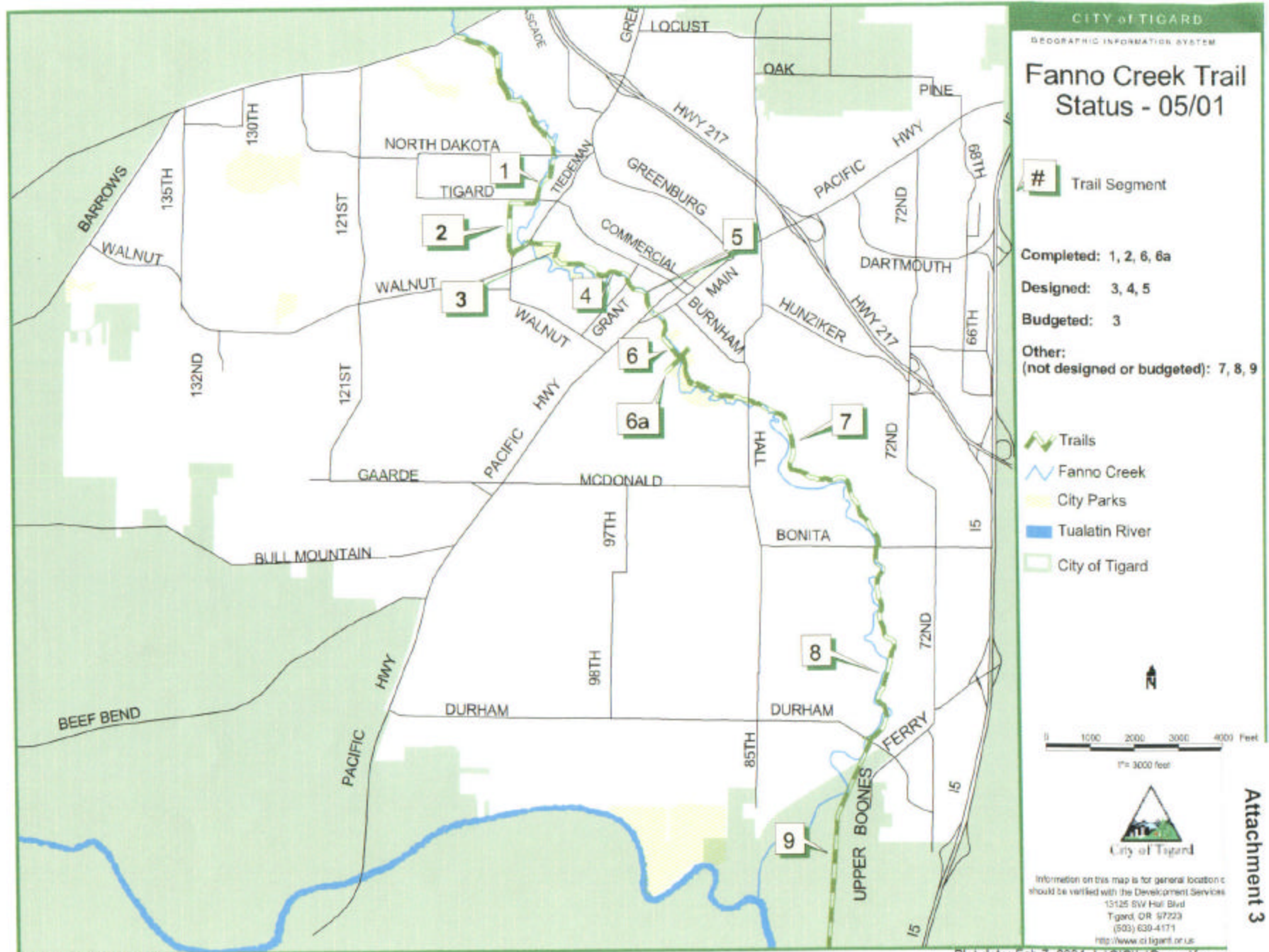
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Fanno Creek Greenway Trail

Connecting the Willamette and Tualatin rivers



- | | | |
|---|---|---|
|  Completed Trail |  Fanno Creek Watershed |  Parks & open spaces |
|  Scheduled for construction (to be completed by Dec. 2002) |  Light Rail transit |  Golf courses |
|  Proposed Trail (alignments are conceptual) |  Railroad tracks |  Schools |
- 09.01.01



Hike with shaper of Fanno Creek trail

Bob Bothman, a former state roads chief who spent 20 years on the project, will guide the 5-mile walk

By TOM QUINN
THE OREGONIAN

BEAVERTON — The man who brought you the Banfield Freeway and the Fremont Bridge is at work on something a little more pedestrian-friendly: a 12-mile, multiuse trail snaking from Southwest Portland through Washington County to the Tualatin River.

Civil engineer Bob Bothman played a large role in many of the projects that shaped Portland's landscape, from surveying the course of Interstate 5 to overseeing bridge construction on I-205 to widening the Sunset Highway. He capped a distinguished 40-year career by becoming director of the Oregon Department of Transportation.

Now retired, the 68-year-old native Oregonian is volunteering the skills he developed during those years to help knit together Fanno Creek Greenway Trail, a verdant band that will link parks, schools and businesses while providing backyard recreation for thousands of area residents.

Bothman will lead a tour along the trail's longest completed section from 9 a.m. to noon Saturday. Joined by Nathalie Darcy, a fellow trail advocate and birder, the five-mile hike will start at historic Fanno Farm House in Beaverton and head north, taking time to explore and explain the unique urban environment while keeping an eye out for wildlife.

Darcy said the creek has a diversity of habitat. Hikers can catch glimpses of songbirds among the trees, lush wetlands, stands of willow, ferns and wildflowers. Springtime brings rookeries of great blue herons and egrets, and cutthroat trout ply the slow-moving waters. Evidence of beaver and deer also can be seen.

Bridges, roads; now greenways

Bothman admits to seeing some irony that the man responsible for miles of concrete roads and steel bridges would turn his attention to greenways. But the reality, he says, is that he has been promoting such efforts for years, first as state transportation director and now as chairman of the Tualatin Hills Park & Recreation trails advisory committee.

"The idea is to get people into the notion of walking," Bothman said, explaining that Metro's 2040 growth concept calls for increased housing and business density. "If we build sidewalks and trails, people will be able to do some of their travels by foot and bike instead of by car. They'll have a way to walk to the grocery store."

Bothman says a regional trail such as Fanno Creek has other merits as well.

"I think it's a really good idea to give people recreational activities close to where they live," he said. "That way, they don't have to get into their cars and drive to Mount Hood. They can do it in their own back yards."



MARV BONDAROWICZ/THE OREGONIAN

When completed, Fanno Creek Greenway Trail will run from the West Hills and through Beaverton and Tigard to the Tualatin River. Advocates say it will be an important corridor for transportation, recreation and nature appreciation.

FANNO CREEK GREENWAY TRAIL

What: A five-mile guided hike along the regional trail under construction

When: 9 a.m. to noon Saturday

Where: Meet at Fanno Farm House, 8405 S.W. Creekside Place, Beaverton

Cost: Free

Information: Bob Bothman at 503-244-7206

Fanno Creek rises on the west side of the Tualatin Mountains and meanders 14 miles through parts of Multnomah and Washington counties and Beaverton, Tigard and Durham before it meets the Tualatin River.

Since 1995, Metro has been acquiring land in the watershed, and a multijurisdictional group has been working to make the trail a reality. Currently, about six miles of

10-foot-wide asphalt trail has been completed.

Trail starting to take shape

For Darcy, creating a regional trail has been a 20-year game of connect the dots that is only starting to take shape. The Garden Home resident echoes Bothman about the values of places such as Fanno Creek.

"They serve as opportunities for

us to enjoy nature near our home," Darcy said. "As our urban environment becomes more and more compact, these ribbons of green will become all that much more important to our quality of life."

During the many years it has taken to create Fanno Creek Greenway Trail, Darcy and Bothman say they have noticed a unique phenomenon.

At first, residents along the trail were resistant, thinking the path would bring criminals to their back doors. Gradually their opinions have changed.

"An urban trail becomes an amenity to the people living nearby," Darcy said. "They go from opposing the trail to taking ownership, and that's a pretty neat process."

AGENDA ITEM # _____
FOR AGENDA OF November 13, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Report on Maintenance of Merestone Pond (SW 121st Ave.)

PREPARED BY: G. N. Berry DEPT HEAD OK A.P Duenas CITY MGR OK W.A.Monahan

ISSUE BEFORE THE COUNCIL

City staff will report on the current maintenance program for the Merestone Pond.

STAFF RECOMMENDATION

The report is for information only and no Council action is requested.

INFORMATION SUMMARY

On November 21, 2000, staff reported to Council the plan for maintaining the pond following consensus reached at a September 20, 2000 neighborhood meeting. The beaver dam would be allowed to remain but would not be maintained. The current water level would not be allowed to increase; a pond leveling devise would be installed if required. A neighborhood volunteer group would be formed to assist with debris removal.

Over the past year, the plan has been successfully implemented and is expected to continue. The beaver dam has remained and is being actively maintained by the beavers. Public Works, at a cost of \$2,915, has performed thirteen maintenance activities including removing debris from the top of the beaver dam to maintain the water level and removing trash and woody debris. The cost is mostly the result of the manual labor required to rake debris from the top of the dam, and load the debris for disposal. Public Works has not requested assistance from the neighborhood volunteer group because of safety concerns although several volunteers have assisted at their own initiative.

The beaver dam has reached a stable height that results in a water level about one foot higher than that agreed upon with the surrounding owners. This level is well below the level of the pond eighteen months ago that caused the complaints from the surrounding owners. Furthermore, the existing pond is aesthetically pleasing, the current level appears to be acceptable to the owners and the pond is expected to require minimal maintenance henceforth.

Public Works anticipates that bimonthly maintenance would be needed to maintain this level and plans to continue that maintenance. If the frequency of required maintenance increases substantially, installation of a pond leveling devise may be considered.

OTHER ALTERNATIVES CONSIDERED

Not applicable

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Not applicable

ATTACHMENT LIST

Not applicable

FISCAL NOTES

Maintenance of pond is funded through the drainage maintenance program.

AGENDA ITEM # _____
FOR AGENDA OF November 13, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE TMC - Burglary and Robbery Alarm Systems

PREPARED BY: Ronald D. Goodpaster DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should Tigard Municipal Code 11.08 be amended to (1) state that the Alarm Coordinator, and not the City Recorder, issues alarm permits; (2) change the length of time for payment of fee assessment and written appeal from three to ten working days; (3) delete section 11.08.124 (b) (4); and (4) delete section 11.08.130 (b).

STAFF RECOMMENDATION

Staff recommends that the changes be made.

INFORMATION SUMMARY

Currently subsections 11.08.030 and 11.08.050 state that the City Recorder issues security alarm permits; however, the Alarm Coordinator actually issues these permits, and the language should be changed.

Subsection 11.08.123, which governs fee assessment for excessive false alarms, states "All fees assessed must be paid to the city finance division or a written appeal must be submitted to the Chief of Police within three (3) working days of the fee assessment." It would be more reasonable to have the fees due within ten (10) working days.

Subsection 11.08.124 states that following the fourth false alarm, notice of suspension will be sent to the dispatch center, the Chief, the alarm user, and the persons listed on the permit to be contacted in the event of an emergency. It is not workable to send notification to the emergency contact names, as the alarm permit information records do not include addresses for the contact people, only their phone numbers. So this section should be deleted.

Subsection 11.08.125 (b) states that the Police Department shall maintain statistics evaluating alarm systems for use by the public. There are many large and small alarm companies and new types of systems being developed all the time. The huge amount of time required for this type of data collection and maintenance is very costly. Therefore, this subsection should be deleted.

OTHER ALTERNATIVES CONSIDERED

No other alternatives considered.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

ATTACHMENTS

TMC 11.08.
Copy of TMC showing suggested revisions
Ordinance.

FISCAL NOTES

There are no additional costs attached to this change.

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CITY OF TIGARD, OREGON

ORDINANCE NO. 01-

AN ORDINANCE AMENDING SECTION 11.08 OF THE TIGARD MUNICIPAL CODE -
BURGLARY AND ROBBERY ALARM SYSTEMS

WHEREAS, Sub section 11.08.030 and 11.08.050 states that the City Recorder issues alarm permits, when in fact the permits are issued by the Alarm Coordinator, and

WHEREAS, the length of time allowed for paying of fees assessed for excessive false alarms or for making a written appeal is 3 working days, and

WHEREAS, it would be more workable if the length of time were changed to 10 working days for payment of fees assessed and written appeal, and

WHEREAS, subsection 11.08.124 of the TMC states that upon the fourth false alarm certified letters will be mailed to the alarm user, the dispatcher and the contact persons named by the alarm user, and

WHEREAS, the addresses of contact persons are not maintained in the alarm records, and

WHEREAS, sub section 11.08.130 (b) requirement to maintain "statistics having the purpose of assisting alarm system evaluation for use by members of the public" is not feasible;

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Sub section 11.08.030 and 11.08.050 is amended to change the words City Recorder to Alarm Coordinator.

SECTION 2: Sub section 11.08.123 is amended to read " . . . must be submitted to the Chief of Police within 10 working days of fee assessment."

SECTION 3: Sub section 11.08.124 (b) (4) and 11.08.130 (b) are deleted.

SECTION 4: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2001.

Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2001.

James E. Griffith, Mayor

Approved as to form:

City Attorney

Date

TIGARD MUNICIPAL CODE

Chapter 11.08 BURGLARY AND ROBBERY ALARM SYSTEMS

Sections:

- 11.08.010 Purpose and scope.**
- 11.08.020 Definitions.**
- 11.08.030 Alarm user permits required.**
- 11.08.050 Senior citizens' exemption.**
- 11.08.060 Charge for failure to obtain or renew permit.**
- 11.08.080 Exemption for governmental political unit.**
- 11.08.090 Emergency notification resources person.**
- 11.08.100 User instructions.**
- 11.08.110 Automatic dialing device--
Certain interconnections prohibited.**
- 11.08.121 Response to alarms.**
- 11.08.123 Excessive false alarms and fee assessment.**
- 11.08.124 No response to excessive alarms.**
- 11.08.125 Appeal of false alarm.**
- 11.08.130 Confidentiality--Statistics.**
- 11.08.140 Allocation of revenues.**
- 11.08.150 Enforcement and penalties.**

11.08.010 Purpose and scope.

(a) The purpose of this chapter is to protect the emergency services of the city from misuse.

(b) This chapter governs burglary and robbery alarm systems, requires permits, establishes fees, provides for revocation of permits, and provides for punishment of violations. (Ord. 82-32 §2, 1982).

11.08.020 Definitions.

(a) "Alarm business" means the business by any individual, partnership, corporation, or other entity of selling, leasing, maintaining, servicing,

repairing, altering, replacing, moving or installing any alarm system or causing to be sold, leased, maintained, serviced, repaired, altered, replaced, moved or installed any alarm system in or on any building, structure or facility.

(b) "Alarm system" means any assembly of equipment, mechanical or electrical, arranged to signal the occurrence of an illegal entry or other activity requiring urgent attention and to which police are expected to respond.

(c) "Alarm user" means the person, firm, partnership, association, corporation, company or organization of any kind in control of any building, structure or facility in which an alarm system is maintained.

(d) "Automatic dialing device" means a device which is connected to a telephone line and is programmed to select a predetermined telephone number and transmit by voice message or code signal an emergency message indicating a need for emergency response.

(e) "Burglary alarm system" means an alarm system signaling an entry or attempted entry into the area protected by the system, inclusive of silent and audible alarm systems.

(f) "Coordinator" means the individual designated by the chief of police to manage and enforce the provisions of this chapter.

(g) "Dispatch center" is the city facility used to receive emergency and general information from the public.

(h) "False alarm" means an alarm signal eliciting a response by police when a situation requiring a response by the police does not in fact exist. It does not include an alarm signal caused by violent conditions or nature or other extraordinary circumstances not reasonably subject to control by the alarm business operator

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or alarm user.

(i) "Governmental political unit" means any tax-supported public agency.

(j) "Interconnect" means to connect an alarm system including an automatic dialing device to a telephone line, either directly or through a mechanical device that utilizes a telephone, for the purpose of using the telephone line to transmit a message upon the activation of the alarm system.

(k) "Primary trunk line" means a telephone line serving the dispatch center that is designated to receive emergency calls.

(l) "Robbery alarm system" means an alarm system signaling a robbery or attempted robbery. (Ord. 87-73 §2, 1987; Ord. 82-32 §3, 1982).

11.08.030 Alarm user permits required.

Every alarm user shall obtain an alarm user permit for each system from the ~~city-recorder~~ alarm coordinator from the effective date of the ordinance codified in this chapter or prior to use of an alarm system. Users of systems having both robbery and burglary alarm capabilities shall obtain separate permits for each function. Application for a burglary or robbery alarm user's permit and a fifteen-dollar fee shall be filed with the city recorder each year. The fee for a combination burglary-robbery user's permit shall be twenty-five dollars. Each permit shall bear the signature of the chief of police, and be for a one-year period. The permit shall be kept physically upon the premises using the alarm system, and shall be available for inspection by the chief of police or his representative. (Ord. 82-32 §4(a), 1982).

11.08.050 Senior citizens' exemption.

If a residential alarm user is over the age of sixty and/or is physically handicapped and is the primary resident of the residence and if no business is conducted in the residence, a user's permit may be obtained from the ~~city-recorder's~~ alarm coordinator's office according to Section 11.08.030 without the payment of a fee. (Ord. 82-32 §4(c), 1982).

11.08.060 Charge for failure to obtain or renew permit.

A twenty-five dollar charge will be charged in addition to the fee provided in Section 11.08.030 to a user who fails to obtain a permit within sixty days after the effective date of the ordinance codified in this chapter or who is more than sixty days delinquent in renewing a permit. (Ord. 82-32 §4 (d), 1982).

11.08.080 Exemption for governmental political unit.

An alarm user which is a governmental political unit shall be subject to this chapter but a permit shall be issued without payment of the fee and shall not be subject to revocation or payment of additional fees or the imposition of any penalty provided herein. (Ord. 82-32 §4(f), 1982).

11.08.090 Emergency notification resources person.

The alarm permittee shall provide the police department with a current updated emergency notification resources person at all times. (Ord. 82-32 §4(g), 1982).

11.08.100 User instructions.

(a) Every alarm business selling, leasing or furnishing to any user an alarm system which is installed on premises located in the city shall furnish the user with instructions that provide information to enable the user to operate the alarm

TIGARD MUNICIPAL CODE

system properly and to obtain service for the alarm system at any time.

(b) Standard form instructions shall be submitted by every alarm business to the chief of police within sixty days after the effective date of the ordinance codified in this chapter. If he finds such instructions to be incomplete, unclear or inadequate, he may require the alarm business to revise the instructions to comply with subsection (a) of this section and then to distribute the revised instructions to its alarm users. (Ord. 82-32 §5, 1982).

11.08.110 Automatic dialing device-- Certain interconnections prohibited.

(a) It is unlawful for any person to program an automatic dialing device to select a primary trunk line or any 911 prefix requiring a police response; and it is unlawful for an alarm user to fail to disconnect or reprogram an automatic dialing device which is programmed to select a primary trunk line within twelve hours of receipt of written notice from the Tigard city police department that it is so programmed.

(b) Within sixty days after the effective date of the ordinance codified in this chapter, all existing automatic dialing devices programmed to select a primary trunk line shall be reprogrammed or disconnected.

(c) It is unlawful for any person to program an automatic dialing device to select any telephone line assigned to the city; and it is unlawful for an alarm user to fail to disconnect or reprogram such device within twelve hours of receipt of written notice from the Tigard police department that an automatic dialing device is so programmed. (Ord. 82-32 §6, 1982).

11.08.121 Response to alarms.

(a) Whenever an alarm is activated in the

city thereby requiring an emergency response to the location by the police department and the department does respond, the police personnel on the scene of the activated alarm system shall inspect the area protected by the system and shall determine whether the emergency response was in fact required as indicated by the alarm system or whether the alarm signal was a false alarm.

(b) If the police department personnel at the scene of the activated alarm system determine the alarm to be false, said personnel shall make a report of the false alarm.

(c) The chief of police or his designee shall have the right to inspect any alarm system on the premises to which response has been made, and he may cause an inspection of such system to be made at any reasonable time thereafter. (Ord. 87-73 §3(Exhibit A(part)), 1987).

11.08.123 Excessive false alarms and fee assessment.

(a) If any alarm system produces four false alarms in any calendar year, the chief of police shall provide by certified mail written notice of the fact asking the alarm user to take corrective action in regard to false alarms and informing the alarm user of the false alarm fee schedule provided herein.

(b) Alarm users installing a new system or making substantial modifications to an existing system shall be entitled to a grace period during which alarms generated by such system shall be deemed nonfalse alarms. The grace period shall cease thirty days after installation of or modification to an alarm system.

(c) Upon any alarm system producing the fifth and sixth false alarm in a calendar year, a fee of fifty dollars per false alarm shall be charged to the alarm user. The following fee schedule shall be used for each additional alarm:

TIGARD MUNICIPAL CODE

(1) Seventh and eighth false alarms in a calendar year, a fee of seventy-five dollars per false alarm shall be assessed.

(2) Nine or more false alarms in a calendar year, a fee of one hundred fifty dollars per false alarm shall be assessed.

All fees assessed must be paid to the city finance division or a written appeal must be submitted to the chief of police within ~~three~~ ten working days of fee assessment. (Ord. 87-73 §3(Exhibit A(part)), 1987).

11.08.124 No response to excessive alarms.

(a) After the second false alarm the coordinator shall send a notification to the alarm user by regular mail which will contain the following information:

(1) That the second false alarm has occurred;

(2) That if two more false alarms occur within the permit year police officers will not respond to any subsequent alarms without the reinstatement of the alarm user by the chief of police;

(3) That the reinstatement of the alarm user can only be obtained by the alarm user furnishing written proof of efforts taken to correct the false alarms, a finding by the chief that a reasonable effort has been made to correct the false alarms, and payment of all fines assessed by the city for false alarms;

(4) That the alarm user may appeal the validity of a false alarm determination to the chief of police by giving written notice and posting a bond equal to the amount of the fee, if applicable, within ten days, according to Section 11.08.125.

(b) After the fourth false alarm within the permit year there will be no police response to subsequent alarms without reinstatement approval of the alarm user by the chief. The coordinator shall send a notice of suspension of police response to:

(1) The dispatch center;

(2) The chief of police;

and

(3) The alarm user by certified mail;

and

~~————(4) The persons listed on the alarm user's permit who are to be contacted in case of emergency, by certified mail.~~

(c) The suspension of police response to an alarm shall begin ten days after the date of delivery of the notice of suspension of police response to the alarm user unless a written request for hearing has been made as required in Section 11.08.125. (Ord. 93-13 §1, 1993).

11.08.125 Appeal of false alarm.

(a) Any alarm user who has been notified of a false alarm or assessed a false alarm fee may appeal to the chief of police by giving written notice and posting a bond equal to the amount of the fee, if applicable, within three working days of the invoice assessing such fee. Upon receipt of the appeal notice and bond, if applicable, a time certain shall be set for a hearing.

(b) The appellant shall be given reasonable notice of such hearing, failure of the appellant to appear at such hearing shall, if applicable, result in forfeiture of the appeal bond, and application of said bond toward the false alarm fee assessed by the city.

(c) The chief of police or his designee shall

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serve as hearings officer. The burden of proof shall be upon the appellant to show by a preponderance of the evidence that the alarm signal in question was not a false alarm as defined in Section 11.08.020(h).

(d) After receipt of all relevant evidence, the hearings officer shall, within three working days, render a decision. If the hearings officer determines that the appellant has met the burden of proof, then the hearings officer shall order the appeal bond released to the appellant and rescind the false alarm determination. If the hearings officer determines that the appellant has not met the burden of proof, then the hearings officer shall order the appeal bond be forfeited and applied toward the alarm fee as assessed by the city and enter such alarm as a false alarm.

(e) All decisions made pursuant to this section are final. (Ord. 87-73 §3(Exhibit A(part)), 1987).

11.08.130 Confidentiality--Statistics.

(a) All information submitted in compliance with this chapter shall be held in the strictest confidence and shall be deemed a public record exempt from disclosure pursuant to state statute; and any violation of confidentiality shall be deemed a violation of this chapter. The police department shall be charged with the sole responsibility for the maintenance of all records of any kind whatsoever under this chapter.

~~(b) Subject to the requirements of confidentiality, the police department shall develop and maintain statistics having the purpose of assisting alarm system evaluation for use by members of the public. (Ord. 82-32 §8, 1982).~~

11.08.140 Allocation of revenues.

All fees, fines and forfeitures of bail collected pursuant to this chapter shall be general

fund revenue of the city of Tigard. (Ord. 82-32 §9, 1982).

11.08.150 Enforcement and penalties.

(a) Violation of this chapter shall be punished upon conviction by a fine of not more than five hundred dollars.

(b) The failure or omission to comply with any section of this chapter shall be deemed a violation and may be so prosecuted, subject to the penalty provided in subsection (a) of this section. (Ord. 82-32 §10, 1982). ■

AGENDA ITEM # _____
FOR AGENDA OF November 13, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Consider Elimination of Chapter 2.06, Residency Requirements of the Tigard Municipal Code

PREPARED BY: Bill Monahan DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should the Tigard City Council eliminate Chapter 2.06, Residency Requirements of the Tigard Municipal Code

STAFF RECOMMENDATION

As part of the City's review of the Tigard Municipal Code in 2001, Chapter 2.06, Residency Requirements has been reviewed. Residency requirements have been challenged in some jurisdictions over the past several years. Tigard's residency requirements originated in 1978 and were last modified in 1986. Presently, certain Department Head and Executive Staff positions identified in the Code are required to establish permanent residency within the boundaries of Clackamas, Multnomah, and Washington Counties within 120 days following the end of the probationary period after appointment.

After consideration of the benefit of residency requirements and the potential challenge to them, staff recommends that the City Council eliminate Chapter 2.06, Residency Requirements.

If Council feels that a residency requirement is needed, the attached memo proposes modifications to eliminate unnecessary language and correct the list of affected positions to include all department heads.

INFORMATION SUMMARY

The Tigard Municipal Code, since 1978, has included residency requirements for certain positions. Among the positions are the city administrator (manager), chief of police, community development director, head librarian, finance officer, and city recorder. These employees are required to establish permanent residency within the boundaries of Clackamas, Multnomah, and Washington Counties within 120 days following the successful completion following the probationary period for the position. Council has the discretion to extend the period for compliance if, in the Council's opinion, the employee had made a demonstrable effort to comply. Failure to established residency within the required time period would result in immediate termination of employment.

Since adoption of the Code provision, no affected employee has been terminated because of failure to establish residency. In the mid-1980's the Code was modified to allow persons holding an affected position to live in Clackamas or Multnomah Counties as well Washington County. Presently employees serving in each of the affected positions live within one of the three counties. There may be several reasons for establishment of residency requirements; however, the Code does not state why the City has such requirements.

The issue of requiring residency for employees has been discussed and subjected to legal challenge in other jurisdictions. No one has challenged the residency requirement in Tigard, however, if the City Council finds that there is no justification to continue the requirement, it would be prudent to eliminate the requirement rather than maintaining the Code provision until a challenge is lodged.

City Council can either take no action and leave the Code provision as it reads or Chapter 2.06 of the TMC can be eliminated or the Code can be updated to include a full listing of affected positions. The attached memorandum provides language that could be modified, added, and eliminated to update the Code should City Council choose to do so.

OTHER ALTERNATIVES CONSIDERED

1. Take no action, leave the Code as is.
2. Modify the Code language as recommended.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

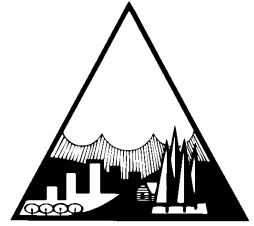
ATTACHMENT LIST

1. Memorandum dated November 2, 2001, from Bill Monahan.
2. Present language of TMC Chapter 2.06 Residency Requirements.
3. Draft ordinance changing the Code as recommended – Option A.
4. Draft ordinance retaining Chapter 2.06 with modifications – Option B.

FISCAL NOTES

N/A

MEMORANDUM



TO: Honorable Mayor & City Council

FROM: Bill Monahan, City Manager

RE: Chapter 2.06 - Residency Requirements

DATE: November 6, 2001

As part of our effort to review and recommend modifications to the Tigard Municipal Code, I have reviewed Chapter 2.06, Residency Requirements. This Chapter provides that named employees employed full-time by the City and certain Department Head positions, including the city administrator (manager) establish permanent residency within the boundaries of Clackamas, Multnomah, and Washington Counties. During the 1980's this code provision was modified, broadening the residency area to include Clackamas and Multnomah Counties.

It is my recommendation that the City Council consider eliminating all residency requirements. Over the last several years, the question of legality of residency requirements has been raised on occasion. In addition, I question whether the residency requirement, which we presently have, benefits the community. In fact, missing from the acceptable list of acceptable counties is Yamhill County. There are areas in Yamhill County that are less driving distance from Tigard than some areas of the three acceptable counties.

I recommend that the City Council eliminate Chapter 2.06 from the Tigard Municipal Code. If, however, Council feels the need to continue to have residency requirements, I recommend the following:

1. 2.06.010 – Residency required – Affected positions.

I recommend that the title "city administrator" be changed to "city manager" and I recommend that the positions of public works director and city engineer be added to the list and the position of finance officer be changed to finance director.

2. 2.06.020 – Persons employed as of January 17, 1978 not affected.

I recommend that this section be eliminated entirely as it has no present application.

CITY OF TIGARD, OREGON

ORDINANCE NO. 01-

AN ORDINANCE DELETING CHAPTER 2.06, RESIDENCY REQUIREMENTS, OF THE TIGARD MUNICIPAL CODE

WHEREAS, Chapter 2.06 of the Tigard Municipal Code requires certain employees to establish residency within the boundaries of Clackamas, Multnomah, and Washington Counties of the state within one hundred twenty days following the end of the probationary period; and

WHEREAS the Tigard City Council, upon review of these requirements, has determined there is no benefit to the community to require certain City employees to establish residency in a limited number of adjacent counties.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Chapter 2.06 of the Tigard Municipal Code (Exhibit A) is hereby deleted in its entirety.

SECTION 2: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2001.

Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2001.

James E. Griffith, Mayor

Approved as to form:

City Attorney

Date

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TIGARD MUNICIPAL CODE

Chapter 2.06 RESIDENCY REQUIREMENTS.

Sections:

- 2.06.010 Residency required--Affected positions.**
- 2.06.020 Persons employed as of January 17, 1978 not affected.**
- 2.06.030 Extension of time to comply.**
- 2.06.040 Sanction.**

2.06.010 Residency required--Affected positions.

All persons employed full-time by the city of Tigard in the positions named in this chapter are required to establish permanent residency within the boundaries of Clackamas, Multnomah, and Washington Counties of the state within one hundred twenty days following the end of the probationary period. The affected positions are the following: city administrator, chief of police, community development director, head librarian, finance officer and city recorder. (Ord. 86-11 §4, 1986: Ord. 84-16 §1, 1984: Ord. 83-44 §1, 1983: Ord. 78-87 §2(part), 1978).

2.06.020 Persons employed as of January 17, 1978 not affected.

Persons employed in the affected positions on the date this chapter takes effect (January 17, 1979) shall not be required by this chapter to establish residency within the urban growth boundary of the city of Tigard. (Ord. 78-87 §2(part), 1978).

2.06.030 Extension of time to comply.

The city council may at its discretion extend the period for compliance with this chapter. Such an extension may be given to any affected employee if that employee has made a demonstrable effort to comply. (Ord. 83-44 §2,

1983: Ord. 78-87 §2(part), 1978).

2.06.040 Sanction.

Failure to establish residency within the required area within the time allowed by this ordinance shall result in immediate termination of employment by the city of Tigard. (Ord. 78-87 §2(part), 1978).■

I:\ADMIN\PACKET\20011113\TMC RESIDENCY ORD A EXH
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CITY OF TIGARD, OREGON

ORDINANCE NO. 01-

AN ORDINANCE AMENDING CHAPTER 2.06, RESIDENCY REQUIREMENTS, OF THE TIGARD MUNICIPAL CODE

WHEREAS, Chapter 2.06 of the Tigard Municipal Code (TMC) requires certain employees to establish residency within the boundaries of Clackamas, Multnomah, and Washington Counties of the state within one hundred twenty days following the end of the probationary period; and

WHEREAS, the Tigard City Council has reviewed the sections contained in TMC Chapter 2.06 and determined that selected wording should be updated.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Tigard Municipal Code Chapter 2.06 is amended as reflected in the attached Exhibit A. In Exhibit A, language that is underlined shall be added and language to be deleted has been ~~struck through~~.

SECTION 2: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2001.

Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2001.

James E. Griffith, Mayor

Approved as to form:

City Attorney

Date

I:\ADM\PACKET\20011113\TMC RESIDENCY ORD B.DOC

TIGARD MUNICIPAL CODE

Chapter 2.06 RESIDENCY REQUIREMENTS.

Sections:

- 2.06.010 Residency required--Affected positions.
- 2.06.020 ~~Persons employed as of January 17, 1978 not affected.~~
- 2.06.0320 Extension of time to comply.
- 2.06.0430 Sanction.

- 2.06.010 Residency required--Affected positions.

All persons employed full-time by the city of Tigard in the positions named in this chapter are required to establish permanent residency within the boundaries of Clackamas, Multnomah, and Washington Counties of the state within one hundred twenty days following the end of the probationary period. The affected positions are the following: city ~~administrator~~ manager, chief of police, community development director, head librarian, finance ~~officer~~ director, public works director, city engineer, and city recorder. (Ord. 86-11 §4, 1986; Ord. 84-16 §1, 1984; Ord. 83-44 §1, 1983; Ord. 78-87 §2(part), 1978).

2.06.020 ~~Persons employed as of January 17, 1978 not affected.~~

~~Persons employed in the affected positions on the date this chapter takes effect (January 17, 1979) shall not be required by this chapter to establish residency within the urban growth boundary of the city of Tigard.* (Ord. 78-87 §2(part), 1978).~~

2.06.030020 Extension of time to comply.

The city council may at its discretion extend the period for compliance with this chapter. Such an extension may be given to any affected employee if that employee has made a

demonstrable effort to comply. (Ord. 83-44 §2, 1983; Ord. 78-87 §2(part), 1978).

2.06.040030 Sanction.

Failure to establish residency within the required area within the time allowed by this ordinance shall result in immediate termination of employment by the city of Tigard. (Ord. 78-87 §2(part), 1978).■

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